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in

HUMPHREY

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 00-01731 CA 09

MARIE J. FONTANA,

Plaintiff,

vs.

PHILIP MORRIS, INCORPORATED,
etc., et al.,

Defendants.

201 South Biscayne Boulevard
Miami, Florida
March 6, 2001
Tuesday, 9:30 a.m.

D E P O S I T I O N

O F

PAUL KOENIGSBERG, M.D.

Taken on Behalf of the Plaintiff
Pursuant to Notice of Taking Deposition

TAYLOR, JONOVIC, WHITE & GENDRON
(305) 358-9047

52434 2135

APPEARANCES:

On behalf of the Plaintiff:

ANGONES, HUNTER, McCLURE,
LYNCH & WILLIAMS, P.A.
66 West Flagler Street
9th Floor, Concord Building
Miami, Florida 33130
BY: Steven K. Hunter, ESQ.
and
GROVER, WEINSTEIN & TROP
777 Arthur Godfrey Road
Miami Beach, Florida 33140
BY: Marvin Weinstein, Esq.

On behalf of the Defendants,
Philip Morris and Lorillard:

SHOOK, HARDY & BACON, P.A.
201 South Biscayne Boulevard
Miami Center
Miami, Florida 33131
BY: Kenneth J. Reilly, ESQ.

On behalf of the Defendant,
Brown & Williamson:

ADORNO & ZEDER, P.A.
2501 South Bayshore Drive
Miami, Florida 33133
BY: Anthony N. Upshaw, Esq.

I N D E X

WITNESS: PAUL KOENIGSBERG, M.D.

Direct By Hunter (Page 3)

1 Thereupon:

2 PAUL KOENIGSBERG, M.D.

3 a witness named in the notice heretofore filed, and
4 having been first duly sworn, was deposed and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HUNTER:

8 Q. Tell us your name, please.

9 A. Paul Koenigsberg.

10 Q. Doctor, do you know John Lynn?

11 A. John Lynn?

12 Q. Jonathon Lynn, an attorney.

13 A. Oh, yes.

14 Q. Do you know him professionally, or do you
15 know him socially or both?

16 A. Just professionally.

17 Q. When were you first contacted in this
18 case, "this case" meaning the Fontana case?

19 A. Within the past month, maybe the past two
20 months. I can't give you the exact date.

21 Q. What were you asked with particularity to
22 this case to do?

23 A. To review the X-ray films on the case as
24 well as medical records.

25 Q. When did you get the X-rays?

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1 I see you are here today with a set of
2 X-rays in front of you.

3 A. The films, I believe, came approximately
4 two weeks ago, if I'm not mistaken.

5 Q. Have you had a chance to review those?

6 A. Yes, I have.

7 Q. What is the first involvement that you
8 have ever had in your professional career with any
9 tobacco litigation?

10 A. Approximately three, maybe four months
11 ago.

12 Q. What occurred at that time?

13 A. I had a meeting with an attorney from this
14 firm, J. B. Simko, to speak about the general cases
15 that were involved with the litigation.

16 Q. What did Mr. Simko explain to you was the
17 reason that they had come to you?

18 A. They had wanted a radiologist that could
19 review records and X-rays, CTs, et cetera, in
20 reference to cases that would be coming up.

21 Q. You understood that those cases involved
22 what? Were they claims of people who had smoked
23 cigarettes suing the tobacco industry, or what kind
24 of cases did you understand at that time, if you
25 did, that you would be involved with?

1 A. I had a general understanding that it was
2 cases of secondhand cigarette smoke and claims of
3 damages of various types, various medical conditions
4 related to that.

5 Q. Now, concerning tobacco and disease, what
6 generally has been your medical training on that
7 issue?

8 A. Nothing specifically related to that.
9 Just in general, you know, whatever was mentioned in
10 my medical school training that tobacco could be
11 related to certain diseases.

12 Q. Do you believe that smoking cigarettes
13 causes disease in human beings?

14 MR. REILLY: Objection to the form.

15 A. I believe so, but I'm not an expert in
16 that.

17 Q. I mean, as regarding your medical
18 training, it's your medical opinion that smoking
19 causes illness.

20 A. It can. That is correct.

21 Q. What illnesses do you think it causes?

22 A. Well, the data so far has shown a link
23 with lung carcinoma as well as COPD.

24 Q. How do you define COPD? It's really a
25 clinical term. It's referred to as an obstructive

1 type of lung disease. The patients have changes
2 inside their lungs that are typical of emphysema.

3 Q. When you read an X-ray film, do you
4 have--- I don't know how this is done these days.
5 I assume you dictate, or do you type into a computer
6 when you are writing your report? How do you
7 physically do that?

8 A. We dictate it.

9 Q. Do you ever use that term when you read a
10 lung film, COPD?

11 A. Yes, I do.

12 Q. Do you include emphysema within that term,
13 COPD?

14 A. I think it's synonymous.

15 Q. How about chronic bronchitis?

16 A. No. It's a separate entity.

17 Q. Asthma?

18 A. Separate entity.

19 Q. What other than emphysema do you include
20 within the term COPD?

21 A. That is it.

22 Q. I thought you said it was a clinical term.

23 A. That's true.

24 Q. Isn't emphysema diagnosed on an anatomical
25 basis?

1 A. Well, it is diagnosed on an anatomical
2 basis, but it's a clinical term that is used as
3 well.

4 Q. What is the clinical aspect of emphysema
5 that equates with COPD?

6 A. Basically, shortness of breath.

7 Q. What courses in your medical training led
8 you to believe that cigarettes cause lung cancer and
9 chronic obstructive pulmonary disease in smokers?

10 A. What do you mean by "courses"?

11 Q. What portions of your medical training led
12 you to believe that to be true? Was it your
13 training, seeing patients with illness, or did you
14 take classes? I mean how did you come to that
15 opinion?

16 A. There isn't one class that we have on
17 tobacco. I mean in certain areas we have different
18 courses, pathology, physiology, anatomy. When we
19 approach certain diseases, there is mention of
20 causation of certain diseases.

21 Q. Did you see any of the televised coverage
22 of the tobacco CEOs raising their hands under oath
23 and testifying that tobacco did not cause disease?

24 MR. REILLY: Objection to the form of the
25 question.

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1 MR. UPSHAW: I join.

2 A. No, I did not.

3 Q. Do you know that they did that?

4 A. No, I do not.

5 Q. Do you know that they testified before
6 Congress that they did not believe that tobacco
7 caused disease?

8 MR. REILLY: Objection to the form.

9 A. Again, I know they testified. I don't
10 know the specifics of their testimony.

11 Q. Do you know the position that the industry
12 has taken on smoking and health --

13 MR. REILLY: Objection to the form.

14 Q. -- say, up until 1998?

15 MR. REILLY: Objection to the form.

16 MR. UPSHAW: Objection to the form.

17 A. No, I do not.

18 Q. Have you made any attempt to make yourself
19 aware of the position of the tobacco industry on
20 smoking and health?

21 MR. REILLY: Objection to the form.

22 A. No, I have not.

23 Q. Are you a member of the American Medical
24 Association?

25 A. No, I am not.

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1 Q. Why not?

2 A. No specific reason.

3 Q. Are you aware of the position of the
4 American Medical Association as to whether members
5 of that association should testify on behalf of the
6 tobacco industry?

7 MR. REILLY: Objection to the form.

8 A. No, I'm not.

9 Q. How many people do you believe every year
10 die from smoking cigarettes?

11 MR. REILLY: Objection to the form.

12 A. I have no idea.

13 Q. You have no idea?

14 A. No.

15 MR. REILLY: Objection to the form,
16 argumentative.

17 Q. Why would you undertake to testify on
18 behalf of an industry and not make at least some
19 cursory examination into what the product does to
20 the health of the American people?

21 MR. REILLY: Objection to the form. You
22 know, if we don't get to a relevant subject
23 pretty soon---

24 MR. HUNTER: You can do whatever you want.

25 MR. REILLY: I will. Don't worry.

1 Q. Do you remember my question?

2 A. No, I do not. Could you just repeat it
3 for me?

4 Q. Why would you undertake to testify on
5 behalf of an industry without making some cursory
6 examination as to what their product has done to the
7 health of the American people?

8 MR. REILLY: Objection to the form.

9 A. I'm not really sure what you are asking
10 me.

11 Q. I'm asking you why you didn't undertake to
12 make some sort of review as to what cigarettes do to
13 American citizens in terms of their health.

14 MR. REILLY: You know what? I think we
15 need to terminate the deposition at this point
16 if this is the kind of haranguing inquiry you
17 are going to make of a radiologist in this
18 flight attendant case. This is not an
19 inquiry--- As a matter of fact, I am confident
20 that Judge Wilson is not interested in having
21 you make this kind of an inquiry at this point
22 in time.

23 MR. HUNTER: If you want to terminate this
24 deposition at the eve of trial so that I
25 can't--- You have already done this to me

1 once. This is now becoming to be a pattern.

2 MR. REILLY: No. Clearly there's no
3 pattern here.

4 I tell you what I will do. I will
5 interrupt it as the rule provides, and we will
6 call Judge Wilson, and we will find out whether
7 or not this witness has to answer these kinds
8 of questions. That's what we will do.

9 MR. HUNTER: All right. Go ahead --

10 MR. REILLY: Great.

11 MR. HUNTER: -- if you want.

12 MR. REILLY: Are you going to continue
13 with this line of questioning? You couldn't
14 ask this question in front of this jury for all
15 the tea in China. You and I both know that.
16 You are only asking this witness these
17 questions to harass him, to abuse him. This is
18 ridiculous.

19 MR. HUNTER: Ken, you have me over a
20 barrel.

21 MR. REILLY: I have you---

22 MR. HUNTER: I'm on the eve of trial.

23 MR. REILLY: This is nonsense.

24 MR. HUNTER: I will go on.

25 MR. REILLY: Why don't you get to the

1 topics that we are here about?

2 MR. HUNTER: Let's understand something.
3 You know, we are going to be together in a lot
4 of these cases, and in the future I'm not going
5 to have a client that is critically ill and a
6 trial that is around the corner.

7 MR. REILLY: I will file a motion in
8 limine on inquiries like this for other cases
9 if it's necessary, if that's your modus
10 operandi, to insinuate to people they shouldn't
11 be testifying or to ask them whether the AMA
12 politically decides whether or not they should
13 testify honestly under oath about the physical
14 condition---

15 MR. HUNTER: That was admitted testimony
16 in Broin II or in Broin I.

17 MR. REILLY: What difference does it make?
18 Broin, the class action, is a completely
19 different lawsuit than these cases.

20 MR. HUNTER: All right. Let's go on
21 without you and I debating this. We will talk
22 about who's right and wrong later.

23 MR. REILLY: You are not Stanley
24 Rosenblatt, and this isn't Judge Kaye.

25 MR. HUNTER: And you are not John Kennedy.

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1 MR. REILLY: I never pretended to be John
2 Kennedy.

3 Q. (By Mr. Hunter) Now, do you smoke?

4 A. No, I do not.

5 Q. Are you married or single?

6 A. I'm married.

7 Q. Does your wife smoke?

8 A. No, she does not.

9 Q. Do you have children?

10 A. Yes, I do.

11 Q. Do they smoke?

12 A. As far as I know, no.

13 Q. How old are they?

14 A. My oldest is almost 21.

15 Q. Have your children ever smoked to your
16 knowledge?

17 A. Have they ever tried a cigarette? I think
18 so.

19 Q. How about yourself?

20 A. I have tried a cigarette.

21 Q. That's it, one? Did you ever take it up
22 as a practice?

23 A. No. Have I smoked more than one?

24 Probably.

25 Q. How about your wife, has she ever smoked?

1 A. Not as a chronic habit, no.

2 Q. Did you ever travel when smoking was
3 allowed on domestic air travel?

4 A. I believe so.

5 Q. How about international flights? Have you
6 ever flown on an international flight where smoking
7 was allowed?

8 A. I don't remember.

9 Q. Did you ask for a smoking or nonsmoking
10 seat?

11 A. I don't remember.

12 Q. When you go to a restaurant, do you ask
13 for the smoking section or the nonsmoking section?

14 A. In Miami there's only nonsmoking, if I'm
15 not mistaken.

16 Q. If you had a choice, which would you pick?

17 A. I would choose the nonsmoking section.

18 Q. Why is that?

19 A. I don't particularly like smoke.

20 Q. Do you have any medical condition that is
21 aggravated by it?

22 A. No.

23 Q. Do you find it annoying?

24 A. I would say so, yes.

25 Q. Do you believe smoke is an irritant?

1 A. What?

2 Q. Do you believe cigarette smoke is an
3 irritant?

4 A. What do you mean by "irritant"?

5 Q. It irritates the respiratory tract?

6 A. I guess it can in certain individuals,
7 yes.

8 Q. Do you believe that it triggers the onset
9 of bronchospasm in asthmatic adults?

10 MR. UPSHAW: Objection to the form.

11 A. I wouldn't have an opinion to that.

12 Q. In your training as a radiologist--- Let
13 me ask you this. In your practice as a radiologist,
14 have you ever given lectures to young adults or
15 school children about smoking?

16 A. No.

17 Q. Have you ever made presentations to any
18 group with X-rays as to the changes that can be seen
19 radiographically in lungs of smokers?

20 A. No.

21 Q. Do you find that there are changes on
22 X-ray of smokers' lungs as opposed to nonsmokers,
23 otherwise being healthy? In other words --

24 MR. REILLY: Objection to the form.

25 Q. -- you have two people healthy, but one is

1 a heavy smoker. Do you find that that leads to
2 changes on X-ray?

3 A. You can or cannot.

4 Q. When you can, what is it that you see?

5 A. Changes of emphysema.

6 Q. How does that appear on an X-ray
7 generally?

8 A. It has different appearances. Depending
9 upon stages, you can have hyperexpansion of the
10 lungs, increase in interstitial markings, bolus
11 disease.

12 Q. Now, the meeting with--- Was it
13 Mr. Simko?

14 A. That is correct.

15 Q. Where did that occur?

16 A. On Miami Beach.

17 Q. Is that where you maintain your office?

18 A. Yes, but it was not at my office.

19 Q. Where is your office? I'm sorry. I
20 didn't ask you that in the beginning.

21 A. It's at Baptist Hospital.

22 Q. Where on Miami Beach did the meeting
23 occur?

24 A. At a Starbucks.

25 Q. Any particular reason for that?

1 A. I live on the Beach.

2 Q. Did the meeting occur during a weekday?

3 A. I believe so, yes.

4 Q. Why did you meet at a coffee shop as
5 opposed to an office setting?

6 A. No particular reason.

7 Q. Who suggested that?

8 A. I don't remember.

9 Q. Who was there?

10 A. Myself, Mr. Simko and, I believe,

11 Mr. Esco.

12 Q. Who is Mr. Esco?

13 A. He's an attorney.

14 Q. Is he with this firm?

15 A. No, he's not.

16 Q. What firm is he with?

17 A. I don't remember.

18 Q. Did you ask them how they got to you?

19 A. They had told me how they found me.

20 Q. How did they find you?

21 A. I knew Chris' -- Mr. Esco's brother, Ben,
22 from another law firm.

23 Q. What other firm?

24 A. Lou Ordonez -- the law firm of Lou
25 Ordonez -- Luis Ordonez.

1 Q. Is that the name of the firm?

2 A. Yes, it is.

3 Q. What is it that you knew about them that
4 led you to know the brother of Ben?

5 A. Well, I have known Lou from his---

6 Q. Or Lou. I'm sorry.

7 A. I have known Lou from his previous
8 association with Marlow, Connell.

9 Q. What did you know of him with Marlow,
10 Connell?

11 A. I had worked with him previously.

12 Q. In what kind of case?

13 A. Medical malpractice cases.

14 Q. How many?

15 A. I believe two.

16 Q. Defense or plaintiff?

17 A. Defense.

18 Q. Were you defending a radiologist?

19 A. In both cases, yes.

20 Q. Who was the radiologist?

21 A. I would have to go back and look at the
22 records.

23 Q. We'll come back to it. If you think of
24 it, blurt it out.

25 Have you ever testified on behalf of a

1 plaintiff against a radiologist?

2 A. Yes.

3 Q. What radiologist was that?

4 A. I don't know.

5 Q. What case was it?

6 A. It's a case--- It's just been one case in
7 South Carolina -- excuse me -- North Carolina.

8 Q. Is it still ongoing, or is it over?

9 A. It's ongoing.

10 Q. Who is the lawyer that retained you?

11 A. Christie Stem.

12 Q. She's located in what city?

13 A. She's in North Carolina. I can't remember
14 the city.

15 Q. How do you spell her last name?

16 A. S-T-E-M.

17 Q. How much do you charge her?

18 A. What do you mean how much do I charge her?

19 Q. What is your professional services? How
20 do you bill for those? How much do you bill her for
21 those?

22 A. It's a per-hour fee.

23 Q. What rate do you charge her?

24 A. \$500 an hour.

25 Q. Is that what you charge when you do legal

1 work?

2 A. That is correct.

3 Q. Without being very specific, tell me
4 generally what that case involves. What kind of
5 reading was it?

6 A. Can we go off the record one second?

7 Q. Sure.

8 (Discussion off the record)

9 Q. I asked you about that case, and you feel
10 uncomfortable discussing it on the record here
11 without permission from the lawyer in North
12 Carolina?

13 A. That is correct.

14 Q. All right.

15 What other cases have you handled for the
16 gentleman from Marlow, Connell other than what you
17 told me so far, any?

18 A. You are talking about Lou Ordonez.

19 Q. Right.

20 A. I believe those were the only two cases
21 while he was at Marlow, Connell that I worked on.

22 Q. After he left them, did you then continue
23 to review cases for him?

24 A. Well, he's the actual lead attorney in the
25 group. I'm not sure how many cases he has -- he's

1 actually done, but I have not done any cases for him
2 specifically.

3 Q. When you say "the lead attorney," you mean
4 the senior partner in his firm?

5 A. That is correct.

6 Q. And the name of that firm again is what?

7 A. Law firm of Luis Ordonez.

8 Q. How many cases in total have you handled
9 for the firm?

10 A. Maybe two or three cases going on.

11 Q. I assume for the defendant.

12 A. That is correct.

13 Q. The only plaintiff case -- am I correct --
14 is the one up in North Carolina?

15 A. I think you asked me plaintiff case
16 against a radiologist. I think that's what you
17 asked me.

18 Q. Yes.

19 A. That is correct, as far as I can remember.

20 Q. Any other plaintiff cases against any
21 other defendant? I'll get to auto accidents in a
22 minute, but in terms of malpractice cases.

23 A. I have one or two other cases, I believe,
24 going on.

25 Q. Where you are representing or you have

1 been retained on behalf of the plaintiff?

2 A. That is correct.

3 Q. What cases are those?

4 A. I have to go back and look at my records.
5 I don't remember them offhand.

6 Q. Who are the lawyers?

7 A. Again, I have to go back to look at the
8 specific records, their names. They are out of
9 town. They are not local.

10 Q. How do these out-of-town people know to
11 come to you?

12 MR. REILLY: Objection.

13 A. Sometimes word of mouth. Sometimes I work
14 for someone else that may know me. There may be
15 certain consulting companies that I may have worked
16 with. They may have given my name.

17 Q. What consulting companies have you worked
18 with?

19 A. There's a company called TASA out of
20 Arizona that I have done some work with.

21 Q. Any other companies?

22 A. A company called Physicians for Quality.

23 Q. The TASA cases that you have been involved
24 with, have they been on behalf of plaintiffs?

25 A. I believe so. There may have been some

1 defense, also.

2 Q. How many cases in total, malpractice
3 cases, do you think you have consulted on in your
4 career?

5 A. Over 15 years, maybe 15 to 20 cases.

6 Q. How are the financial arrangements with
7 TASA handled?

8 A. They bill for the services, and then a
9 percentage of that fee goes to me.

10 Q. What is the percent?

11 A. Can we go off the record a second?

12 Q. No. I want to stay on for this issue.

13 MR. REILLY: Let's go off the record and
14 see what the issue is.

15 MR. HUNTER: Well, all right, but I'm
16 going to keep going down this road a little
17 bit.

18 (Discussion off the record)

19 A. They take 30 percent of an hourly fee, and
20 they set the hourly fees.

21 Q. What do they set your fee at?

22 A. I believe it's \$350 an hour.

23 Q. What do they do for that 30 percent? What
24 services do they bring to the table, as you
25 understand it?

1 A. They basically collect the money. They do
2 any sort of phone calls in between myself and the
3 attorneys, et cetera, basically administrative work.

4 Q. Do they advertise?

5 A. I believe so, yes.

6 Q. Can you advertise as a medical doctor in
7 the State of Florida?

8 A. I do not know. I assume you can. I have
9 seen other physicians advertise.

10 Q. What percentage of your income do you
11 believe you would attribute to your consulting in
12 medical cases?

13 A. Approximately 10 percent.

14 Q. Now, do you also consult in personal
15 injury cases?

16 A. Yes, I do.

17 Q. What percentage of your income would you
18 think is connected with consultation in personal
19 injury cases?

20 A. Well, the 10 percent would include all
21 consultations.

22 Q. In the personal injury field, what kinds
23 of cases do you get involved with?

24 A. What do you mean what kind of cases do I
25 get involved with?

1 Q. Is there a typical kind of case that you
2 would be involved with as a radiologist? Aside from
3 a malpractice case, is there a typical case in the
4 personal injury area that you would be involved
5 with?

6 A. No.

7 Q. Would you have a typical type of client
8 that would come to you?

9 A. What do you mean by "typical type of
10 client"?

11 Q. Like Allstate Insurance Company.

12 A. I have worked with Allstate.

13 Q. State Farm?

14 A. That is correct.

15 Q. Progressive?

16 A. Correct.

17 Q. Do you testify on behalf of defendants or
18 plaintiffs in personal injury cases?

19 A. Both.

20 Q. What would you say the ratio is between
21 plaintiff and defendant?

22 A. In personal injury cases?

23 Q. Yes.

24 A. More defense than plaintiff.

25 Q. How many cases do you think in the past

1 year you actually testified in a trial in,
2 personally injury cases?

3 A. Which year are we talking about?

4 Q. Let's say a year back from today.

5 A. So, the year of 2000?

6 Q. Yes.

7 A. In-court testimony? Maybe half a dozen.

8 Q. How about the year preceding?

9 A. I imagine about the same.

10 Q. Pretty level? I mean you are not
11 increasing that as a component of your practice?

12 A. In court, I think I have been about the
13 same. Again, I don't take -- I don't have the exact
14 records of how many times I have been in court.

15 Q. Do you have a standard fee that you charge
16 to review films in a personal injury case?

17 A. Yes, I do.

18 Q. What is that?

19 A. Well, it depends on the type of films that
20 are sent to me, MRIs, et cetera. Usually, for
21 review of an MRI, it's \$500.

22 Q. How about straight X-rays?

23 A. It would depend upon the quantity, how
24 many different body parts, et cetera. In general,
25 it's less, like \$250.

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1 Q. Cervical spine series would be \$250?

2 A. In general, yes.

3 Can I ask you a question? I have an 11:00
4 appointment. I just want to know---

5 Q. I think you'll make it. Where is it?

6 A. In Miami Beach.

7 Q. All right.

8 Getting back now to the meeting at
9 Starbucks, what did you discuss there?

10 A. Again, I think it was just general
11 discussion about the case and the need for the
12 possibility of reviewing X-rays, et cetera.

13 Q. Did they tell you how many cases they
14 anticipated?

15 A. No, they did not.

16 Q. Did they say it would be more than one?

17 A. I don't know if there was a number. I
18 assume--- I was told there was a class action
19 lawsuit with a number of claimants inside the class
20 action lawsuit.

21 Q. To date, how much have you billed in this
22 particular case?

23 A. In the Fontana case?

24 Q. Yes.

25 A. I think there's been four hours of time,

1 but I would have to go back and look at the record.

2 Q. How about in the Marisa Mitchell case?

3 A. There was maybe half an hour or an hour of
4 time. I'm not sure.

5 Q. How about the total number of hours that
6 you have billed the tobacco companies for either
7 meetings or any review of anything, what would that
8 be?

9 A. I don't have an exact number. It may be
10 seven or eight hours.

11 Q. Generally, what did that other time
12 involve?

13 A. There was a third case.

14 Q. What case is that?

15 A. The Ady case.

16 Q. Other than specific cases, have you had
17 any meetings where you just generally were either
18 educating lawyers or discussing radiology or of a
19 general nature?

20 A. Could you repeat that?

21 Q. Yes. Other than time that is case
22 specific, either to Mitchell, Ady or Fontana, have
23 you had any other billing to the tobacco companies
24 where you just generally consulted with them on the
25 issue of secondhand smoke and flight attendants and

1 their X-rays?

2 A. No.

3 Q. Do you know who handled the class action
4 case?

5 MR. UPSHAW: Objection to the form.

6 A. Do I know who handled the class---

7 Q. Who the lawyer was.

8 MR. REILLY: Which side are you talking
9 about?

10 Q. The lawyer for the plaintiffs, the flight
11 attendants.

12 A. This was in the original case?

13 Q. Yes.

14 A. Yes.

15 Q. Do you know that was Mr. Rosenblatt?

16 A. Yes, I do.

17 Q. Do you know him personally?

18 A. Sort of.

19 Q. Do you get along with him all right?

20 MR. UPSHAW: Objection to the form.

21 A. I guess so.

22 Q. Do you socialize with him?

23 A. No.

24 Q. Do you consider him a friend?

25 A. I don't know.

1 Q. Have you ever had an argument or
2 disagreement with him?

3 A. We have.

4 Q. Now, what do you have here today in
5 addition to the X-rays?

6 A. There are some records from some
7 physicians and some X-ray reports.

8 Q. Have you had a chance to study those?

9 A. Yes, I have.

10 Q. Just let me take a look at them, if you
11 would.

12 Let me just start with the medical
13 records. There's the Boca Raton Community Hospital
14 medical records. Have you had a chance to study
15 those?

16 MR. REILLY: From which hospitalization?

17 MR. HUNTER: From the most recent one,
18 which is, I think---

19 A. In February of this year?

20 Q. Yes.

21 A. Yes, I reviewed the X-ray reports.

22 Q. When did you first get those?

23 A. These reports, I think I received some of
24 them last week and some of them this week.

25 Q. When last week?

1 A. Friday.

2 Q. Just limited to these records, have you
3 altered or changed any opinions you formed from your
4 review of previous X-rays or records?

5 A. Can you repeat the question?

6 Q. Yes. Just limited to these new records --
7 when I say "new," meaning February of this year --
8 has that altered any opinions that you had formerly
9 formed based upon your review of the other films and
10 records?

11 A. No.

12 Q. Now, in an effort to hopefully get you on
13 your way, could you kind of summarize your analysis
14 of the films that you have looked at and give me
15 your findings?

16 A. Sure.

17 The films began in as early as 1989 and, I
18 think, the most recent in the year 2000. I don't
19 have the most recent films from the Boca
20 hospitalization.

21 On the earlier chest films, there's
22 evidence for bilaterally enlarged hilar lymph nodes,
23 lobulated in appearance, with some changes
24 consistent with interstitial fibrosis in the bases,
25 and those changes have progressively increased over

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1 the course of, say, ten years. Given the patient's
2 clinical history, presentation, et cetera, and all
3 the medical notes, it's consistent with a diagnosis
4 of sarcoidosis.

5 Q. How do you pronounce the term -- I'm going
6 to spell it -- R-O-E-N-T-G-E-N-O-G-R-A-M-S?

7 A. Roentgenogram, I think, is what you are
8 saying.

9 Q. I wrote it here. I'm going to let you see
10 it so we can talk.

11 A. Right, X-rays.

12 Q. So, if I say the word "roentgenogram,"
13 that means X-ray?

14 A. That is correct.

15 Q. Would you agree with me that 50 percent of
16 patients with significant chronic airways
17 obstruction will have normal to near normal chest
18 X-rays?

19 A. Can you repeat that again?

20 Q. 50 percent of patients with significant
21 chronic airways obstruction will have normal to near
22 normal chest X-rays?

23 A. I'm not sure about the exact percentage.
24 So, I couldn't comment on that at this time.

25 Q. Would you say it's high, a large

1 percentage, up to 50 percent?

2 A. You know, I couldn't comment. There's a
3 percentage of patients that may have normal films
4 with COPD.

5 Q. Now, in terms of your analysis of these
6 X-rays, what do you see in terms of airway disease?

7 A. What do you mean by "airway disease"?

8 Q. Any sort of COPD.

9 A. There's really no evidence of COPD per se
10 as a separate clinical entity on the films.

11 Q. Let me understand what you mean when you
12 say "separate clinical entity."

13 A. Well, there's a disease process going on
14 in this patient called sarcoidosis. Sarcoidosis can
15 have multiple different presentations on a chest
16 film and CT. The classical presentations are
17 bilateral lobulated, quote/unquote, potato lymph
18 nodes in the hilar area -- it's the first
19 presentation -- which can or cannot be calcified,
20 which then can go on to give you interstitial lung
21 disease, and that interstitial lung disease can
22 progress. So, the constellation of findings on a
23 film is consistent with sarcoidosis.

24 COPD would be a totally separate
25 pathologic entity. It would be separate from what

1 we are seeing on the films.

2 Q. Do you see any evidence of COPD?

3 A. As a separate clinical entity, no.

4 Q. Can you rule it out based upon the X-ray
5 review that you have done?

6 A. Yes.

7 Q. How do you do that?

8 A. Well, COPD will not give you enlarged
9 lymph nodes.

10 Q. I'm saying in addition --

11 MR. REILLY: Objection to the form.

12 Q. -- as a separate disease process.

13 A. Basically, with COPD, the hallmark of it,
14 you would see multiple blebs and/or bullae in the
15 lungs, meaning you would have destruction of air
16 spaces with basically black areas in the lungs.
17 With the exception of one small focus in, I believe,
18 the left upper lobe, you do not have those findings
19 on this film or these series of films.

20 Q. What about peribronchial thickening?

21 A. What about it?

22 Q. Can you see that on an X-ray?

23 A. You can see it on an X-ray.

24 Q. Have you looked to see if there's any
25 evidence of that in any of these films?

1 A. There may be some evidence of
2 peribronchial thickening.

3 Q. Would that be an indication of airways
4 disease?

5 A. No.

6 Q. Why not?

7 A. Well, the bronchi are not the airways that
8 you are talking about. The airways are the alveoli.
9 The bronchi are the tubes that go down to the
10 airways.

11 Q. What about disease of the bronchi?

12 MR. REILLY: What about it?

13 Q. Do you see any evidence of that on the
14 films?

15 A. What do you mean by "disease of the
16 bronchi"?

17 Q. Thickening.

18 A. Peribronchial thickening, is that what you
19 are referring to?

20 Q. Yes.

21 A. There may be some areas of peribronchial
22 thickening.

23 Q. In terms of disease, what would that
24 indicate, if anything?

25 A. It just would indicate inflammation, such

1 as, i.e., bronchitis.

2 Q. Would that have a connection to the
3 process of the sarcoidosis or the interstitial lung
4 disease?

5 A. Well, you could have superimposed
6 bronchitis on top of the interstitial lung disease.

7 Q. Can you make a diagnosis of that by X-ray?
8 I mean, can you personally, after having done so,
9 say that that does or does not exist, a bronchitis
10 superimposed on the interstitial lung disease?

11 MR. REILLY: Objection to the form of the
12 question. Do you mean in this person or---

13 MR. HUNTER: Yes, this person.

14 A. So, you are asking me, is there
15 superimposed bronchitis on top of the sarcoidosis
16 within the lymph nodes in the lung? Is that what
17 you're saying?

18 A. Yes, sir.

19 A. I don't believe I can make that diagnosis,
20 no.

21 Q. Could you rule it out?

22 A. Well, clinically, if a physician is saying
23 there is acute bronchitis and the X-rays are normal,
24 you would go with the clinical diagnosis. But I'm
25 not sure what you mean, could you rule it out. If

1 you don't see it on the films, it's in general
2 thought not to be present.

3 Q. Do you see peribronchial thickening?

4 A. I need to go back and look specifically at
5 that fact to see if there is any. As I said before,
6 I think there may be, but I don't think that was the
7 predominance of the findings on the films.

8 MR. HUNTER: Let me have a couple of
9 minutes, and then we'll wind up.

10 (Thereupon, a recess was taken, after
11 which the following proceedings occurred:)

12 Q. (By Mr. Hunter) Doctor, do you have a
13 general text in your office on radiology that you
14 refer to?

15 A. One general text?

16 Q. Yes, or give me, say, a couple of the
17 books that come to mind that you keep in your office
18 as a general reference.

19 A. There isn't one specific or two specific.
20 It depends on--- We have multiple textbooks in our
21 office for reference.

22 Q. What reference texts do you consider
23 authoritative generally on the issue of chest films
24 and looking for interstitial lung disease and COPD?

25 A. Dr. Ben Felzman has a textbook called, I

1 believe, Chest Radiography. It may have a different
2 name. It may be Principles of Chest Radiography.
3 It's by Dr. Ben Felzman.

4 Q. Can you give me an overall sense of what
5 your opinion is that you expect to testify to if you
6 are called as a witness in this case?

7 MR. REILLY: Objection to the form.

8 A. It's basically what I told you. What I
9 saw on the X-rays, that's what I will be testifying
10 to.

11 Q. Do you know of any other opinions that you
12 expect to give that you haven't generally discussed
13 with me?

14 MR. REILLY: Objection to the form.

15 A. I don't believe so, no.

16 MR. HUNTER: I don't have any further
17 questions.

18 MR. REILLY: Just for the record, we have
19 not gotten the X-rays to him yet, the X-rays
20 for the most recent hospitalization. He has
21 the reports, as he indicated. We do intend to
22 show him those X-rays as soon as they are
23 available.

24 Q. (By Mr. Hunter) But you did look at the
25 X-ray reports of the recent hospitalization. What

1 generally do they show? I know they didn't change
2 any previous opinion that you held, but what's going
3 on, you know, recently?

4 A. What do you mean by "recently," the
5 Boca --

6 Q. Yes, the Boca admission.

7 A. -- admission in February of 2000 and one
8 of this year?

9 Apparently there was a spontaneous
10 pneumothorax that was treated with a chest tube.
11 The other findings on the films were consistent with
12 sarcoidosis.

13 Q. What's the difference between what I call
14 a collapsed lung and pneumothorax?

15 A. Pneumothorax is air that's collected
16 around the lung in the lining of the pleura. A
17 collapsed lung means that segments of the lung
18 and/or the whole lung collapses.

19 MR. REILLY: I told you that yesterday.

20 MR. HUNTER: Well, I didn't understand it,
21 and I still don't.

22 Q. What is the difference between those two
23 things? One is just an air space, and the other is
24 an actual deflation of the structure?

25 A. Correct. They are two separate entities.

1 Q. Are you able to tell from looking at that
2 record what it was that caused the pneumothorax?

3 A. I do not believe so, no.

4 Q. Did she have a bacterial or an infectious
5 process going on?

6 A. I don't remember if she had a superimposed
7 infection. I would have to go back and look at the
8 records again.

9 MR. HUNTER: I don't have any further
10 questions.

11 MR. REILLY: Fine.

12 MR. HUNTER: You have the right to read
13 this, or you can waive it.

14 THE WITNESS: I would like to read it.

15 (Thereupon, the deposition was
16 concluded at 10:20 a.m.)

17
18 PAUL KOENIGSBERG, M.D.

19
20 Sworn to and subscribed before me
21 this day of , 2001.

22
23 Notary Public - State of
24 My Commission Expires:
25

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF DADE)

I, CRAIG W. TAYLOR, the undersigned
authority, hereby certify that the following-named
deponent personally appeared before me and was
thereupon duly sworn:

PAUL KOENIGSBERG, M.D.

WITNESS my hand and official seal this
8th day of March, 2001.


CRAIG W. TAYLOR

Notary Public - State of Florida
Commission No. CC 977242

My Commission Expires January 22, 2005



REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)

COUNTY OF DADE)

I, the undersigned authority, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not of counsel, am not related to nor employed by any attorney to this suit and am not financially interested in the outcome thereof.

Dated this 8th day of March, 2001.


CRAIG W. TAYLOR

IN THE CIRCUIT COURT
OF JEFFERSON COUNTY, MISSISSIPPI

EZELL THOMAS, et al.,
Plaintiffs,

AND

OWENS CORNING,
Third Party Plaintiffs,

VERSUS

CIVIL ACTION NO. 96-0065

R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.

DEPOSITION OF NEIL B. JURINSKI, Ph.D., CIH

Taken at the Offices of Shook, Hardy
& Bacon, 600 14th Street, N.W., Suite
800, Washington, D.C., on Friday,
February 23, 2001, beginning at 9:00 a.m.

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Examination by:Page

Mr. Forman

5

Exhibits:Exhibit 1, Notice of Deposition

6

Exhibit 2, Letter to Tim Gray
from Bruce R. Tepikian, dated
2/19/01, with Attachment

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Exhibit 3, Work Sheet

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Exhibit 4, Work Sheet

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Exhibit 5, Letter to Richard L.
Forman from Bruce R. Tepikian,
dated 2/20/01

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Exhibit 6, Letter to Bruce
Tepikian from Richard L.
Forman, dated 2/21/01

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Exhibit 7, Agreed Order
Regarding Expert Witnesses

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Exhibit 8, Letter to Richard
L. Forman from Bruce R.
Tepikian, dated 2/22/01

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Stipulation

4

Certificate of Court Reporter

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Witness Signature Sheet

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STIPULATION

It is hereby stipulated and agreed by
and between the parties hereto, through their
respective attorneys of record, that this
deposition may be taken at the time and place
hereinbefore set forth, by Candace O'Barr
Holleman, C.S.R., Court Reporter and Notary
Public, pursuant to the Mississippi Rules of
Civil Procedure, as amended;

That the formality of **READING AND
SIGNING** is specifically **NOT WAIVED**;

That all objections, except as to the
form of the questions and the responsiveness of
the answers, are reserved until such time as
this deposition, or any part thereof, may be
used or is sought to be used in evidence.

1 NEIL B. JURINSKI, Ph.D., CIH

2 having been first duly sworn, was
3 examined and testified, as follows:

4 EXAMINATION

5 BY MR. FORMAN:

6 Q. Dr. Jurinski, my name is Rick Forman.
7 We met just a few minutes ago. Have you given a
8 deposition before?

9 A. Yes, I have.

10 Q. So you are generally familiar with
11 the rules of how depositions are conducted?

12 A. That's correct.

13 Q. If I ask you something you don't
14 understand, would you let me know that?

15 A. Yes.

16 Q. Do you want to read and sign the
17 deposition?

18 A. No. I will waive it.

19 Q. Anything else?

20 MR. KEMNA:

21 Let's talk for just a second, Dr.
22 Jurinski.

23 (Off the record.)

24 THE WITNESS:

25 I'd like to reconsider that last

1 answer and say, yes, I'd like to read it.

2 MR. FORMAN:

3 Q. And sign it?

4 A. And sign it.

5 MR. FORMAN:

6 Let me hand you a copy of the notice
7 of the deposition and mark that as Exhibit 1.

8 (Exhibit 1 was marked.)

9 MR. FORMAN:

10 Q. Can you tell me for which defendant
11 you are appearing in this case?

12 A. I know specifically of Philip Morris.
13 And there were other companies. I cannot tell
14 you specifically the extent of all of the
15 defendants.

16 Q. And what -- Or when were you first
17 contacted about the case?

18 A. I was contacted about this case in
19 late spring. It was around the end of May or
20 early June of last year.

21 Q. And, generally, what were you asked
22 to undertake, or to do?

23 A. Well, the case which I refer to as
24 the Thomas case was described to me as a request
25 for me to review certain claims files

1 information content and to make an evaluation of
2 the materials contained within those files to
3 assess whether they substantiated the exposures
4 that could be associated with various lung
5 diseases.

6 Q. Before we get into the substance of
7 your opinions about that, have you appeared in
8 any prior cases as an expert witness?

9 A. I have not appeared in any cases as
10 an expert witness in reference to tobacco
11 litigation, if we can limit it to that. I have
12 previous experience as an expert witness.

13 Q. In what kinds of cases have you
14 appeared as an expert in the field of industrial
15 hygiene?

16 A. I would generally classify them as
17 toxic torts.

18 Q. Have you appeared as an expert in any
19 prior asbestos cases?

20 A. Yes, I have.

21 Q. And for who?

22 A. In the asbestos cases, I was
23 appearing for plaintiffs.

24 Q. And can you give me the name of an
25 attorney with whom you worked?

1 A. An attorney that I worked with on an
2 asbestos case?

3 Q. Yes.

4 A. Mr. Larry Cohan in Philadelphia.

5 Q. How do you spell that?

6 A. C-O-H-A-N.

7 Q. Philadelphia, Pennsylvania?

8 A. Yes.

9 Q. Anyone else?

10 A. There were other associates in his
11 firm. Mr. Tom Anapol, who is also in that same
12 firm, A-N-A-P-O-L.

13 Q. Any other firms you have worked with
14 on asbestos cases?

15 A. I worked with some cases that didn't
16 go to trial or deposition. There was a firm in
17 Richmond. I'm trying to remember the name of
18 the firm. I think it was the Fishburn firm.
19 The attorney there, I believe, was, if I
20 remember, her name was Patricia Shield. I'm not
21 exactly certain of her last name. I forgot it.

22 I also worked with a firm in
23 Arlington, Virginia, with an attorney, Mr. Joe
24 Fisher.

25 Q. Would that comprise all of the

1 asbestos firms -- or plaintiff firms you worked
2 with in asbestos cases?

3 A. Right. Now, those last two cases
4 were peripheral to asbestos work. The actual
5 toxic materials were associated solvents that
6 are used during asbestos abatement.

7 Q. In your work with Larry Cohan, did
8 you actually give any depositions or appear as a
9 witness at trial?

10 A. Yes, I did.

11 Q. Approximately, how many times?

12 A. Let's see. I believe I was in trial
13 actually once.

14 Q. And deposition?

15 A. Depositions, I provided depositions,
16 I believe, twice for them.

17 Q. What was the nature of the work that
18 you undertook in those asbestos cases as an
19 industrial hygienist?

20 A. The nature of the work was to
21 evaluate the facts on record regarding work that
22 had been done or operations that were conducted
23 to examine what would be the nature of possible
24 exposures associated with the work.

25 Q. What were the diseases at issue in

1 the cases you were involved in?

2 A. The diseases were asbestos,
3 asbestosis and lung cancer.

4 Q. How many different cases of
5 asbestosis, for example, did you testify about?
6 Let me ask it this way in case that's confusing:
7 Sometimes cases are grouped for trial. There
8 may be five cases in one trial or ten cases, or
9 whatever. So did you evaluate more than one
10 case for a trial?

11 A. No. The way the nature of the work
12 was structured, I know there were multiple
13 workers at a given work site. So I was not
14 necessarily focusing on a particular individual,
15 but, rather, a work site and the kinds of
16 operations done by different trades.

17 Q. Did you provide opinions about the
18 degree of asbestos exposure at those job sites?

19 A. Yes.

20 Q. Did you give opinions about the
21 extent of exposure in the form of an opinion
22 about fibers per cc, for example, of exposure?

23 A. No. In all probability, there was
24 never any air sampling done in most all of those
25 work sites.

1 Q. So what would be the nature of the
2 opinion that you would be able to give about
3 exposure in those types of cases, then?

4 A. The nature of exposure would have
5 been classified on a more generic or
6 semi-quantitative terms, rather than
7 quantitative; low, medium, high, negligible,
8 different kinds.

9 Q. Is that the kind of opinion you gave
10 in those cases?

11 A. Different kinds of rankings of
12 general types of exposure.

13 Q. How would you classify a low asbestos
14 exposure?

15 A. A low asbestos exposure would be
16 classified as being in the vicinity of a
17 material that has capability of releasing fibers
18 to the air, but at a very low rate of release.

19 Q. Does that opinion take into account
20 the amount of fibers per cc that are released?

21 A. I'm speaking, as we had in context
22 earlier said, on semi-quantitative, not
23 quantitative basis. So these would be not
24 specifying fibers per cc.

25 Q. All right. I understand that you

1 didn't give a specific opinion in the case about
2 the fibers per cc of exposure in that case. But
3 when you say someone had a, quote, low exposure
4 to asbestos, do you have a figure in mind in
5 terms of fibers per cc into which you would
6 classify low exposure?

7 A. Not on any instantaneous fiber
8 concentration level, no. It would be
9 representative of an accumulation of work time
10 in the jobs and nature of the jobs.

11 Q. Would this be a lifetime estimate,
12 then, that you would give?

13 A. This would be an estimate based on
14 the record of the extent of time that could be
15 attributed to being at a particular area.

16 Q. And in that particular case, can you
17 give me an example of an area or a product in
18 which you said this was a, quote, low exposure?

19 A. In general, persons who might have
20 limited time of occupancy in a workroom or zone
21 where no actions are being done to actively
22 release fibers. An example might be in a
23 storeroom that has probability of a low
24 background level of airborne fibers and a person
25 who might transit through that storeroom on

1 occasion.

2 Q. Without there being any active
3 asbestos operations going on?

4 A. Correct.

5 Q. Have you ever given an opinion that a
6 degree of asbestos exposure is low when there
7 are any active operations of asbestos work going
8 on?

9 A. I don't believe I have ever been
10 asked that specific question.

11 Q. Have you evaluated any specific
12 asbestos products for fiber release?

13 A. I have evaluated fiber release of
14 asbestos gloves. I have evaluated fiber release
15 of automobile brake changing. I have evaluated
16 asbestos release from insulation removal. I
17 have evaluated asbestos exposure release from
18 floor tile removal.

19 There is probably numerous other
20 ones. I'm just trying to recall some of the
21 work that I have done.

22 Q. Let me go back to your classification
23 of medium asbestos exposure. Can you give me an
24 example of a situation that you would classify
25 as a medium exposure?

1 A. This would involve persons who had
2 opportunity to be frequently in the area where
3 active fiber release was occurring and, at the
4 same time, was not a situation where very heavy
5 fiber release was present.

6 Q. Do you have a fiber concentration in
7 mind when you use the term "medium exposure"?

8 A. No, I don't.

9 Q. When you say there was active fiber
10 release occurring, can you tell me what kind of
11 product you are referring to there?

12 A. In most of the situations where that
13 occurs, it would be associated with
14 asbestos-containing insulation materials.

15 Q. Such as pipe covering or block?

16 A. That's more commonly encountered,
17 yes.

18 Q. How would you, then, if someone is in
19 an area where there is active fiber release
20 going on from the use of asbestos pipe covering
21 or block, how would you distinguish between
22 medium or heavy exposure?

23 A. Heavy exposure would be distinguished
24 from medium exposure in that the persons who I
25 would consider to be heavily exposed would, in

1 all probability, be actively engaged in work in
2 which they themselves were removing such
3 materials, removing or handling.

4 Q. Such as an insulator, for example?

5 A. Such as an insulator.

6 Q. Or someone directly working with a
7 product?

8 A. Correct.

9 Q. And do you have a fiber measurement
10 in mind when you describe heavy exposure in
11 terms of fibers per cc?

12 A. No, I don't.

13 Q. Is the difference, then, between
14 medium exposure and heavy exposure whether one
15 is working as a bystander or working directly
16 with a product?

17 A. No. It would be circumstance driven.

18 Q. All right. Can you give me a
19 circumstance in which a bystander would have
20 heavy exposure, then?

21 A. A bystander could be, perhaps,
22 non-engaged in the active work, but the active
23 work could release in proximity to that person a
24 cloud of asbestos dust. I would consider that
25 to be a heavy exposure.

1 Q. Without making any measurement, you
2 would classify that?

3 A. If I could see that it was an active
4 release that in an area had released
5 significant, i.e., normally described by people
6 as "I could see the cloud," I would classify
7 that as a heavy exposure.

8 Q. Have you ever given any opinion in
9 any asbestos case about what degree of fiber
10 exposure in terms of fibers per cc would
11 constitute a heavy exposure?

12 A. No.

13 Q. And in these cases, for example, in
14 which you have testified in which there was an
15 issue of asbestosis and lung cancer, I believe
16 you said, were these two separate cases?

17 A. Those were cases done with Mr. Cohan
18 that I believe were a group of cases that I
19 discussed earlier. I was evaluating workplaces
20 and operations, and I'm not certain how many
21 different people were involved in the named list
22 of plaintiffs.

23 Q. Was your testimony to the effect that
24 there was sufficient exposure to justify
25 diagnosis of asbestosis in the asbestosis case?

1 A. The nature of the testimony asked of
2 me was were there possibilities of release of
3 asbestos fibers that could be a hazard, and my
4 answer was yes.

5 Q. What is a hazard?

6 A. What is a hazard? A hazard is a
7 property of the material to be able to produce
8 some adverse effect.

9 Q. So there would be enough exposure to
10 produce an adverse effect, then, in your opinion
11 in those cases; that was the nature of your
12 testimony?

13 A. Yes.

14 Q. Do you have an opinion as to the
15 amount of exposure required to produce enough of
16 a hazard to cause asbestosis in a person?

17 A. Here, you are trying to give a
18 quantitation to hazard by saying "enough of a
19 hazard." The hazard is present. When the
20 material is also released, there may be an
21 increase in risk due to the presence of the
22 hazard. So I look at that as an increase in
23 risk.

24 Q. Is there any amount of exposure to
25 asbestos which you would consider not to be a

1 hazard? In other words, it's so low it would
2 not be, quote, hazardous?

3 A. No. I believe that asbestos is
4 inherently hazardous. It has that property.

5 Q. So would it be your opinion that any
6 amount of exposure from an asbestos product, if
7 fibers are released, creates a potential hazard?

8 A. The hazard is present. It is not a
9 potential hazard.

10 Q. So there is a hazard if there is any
11 fiber released?

12 A. There is a hazard if a hazardous
13 material is present.

14 Q. When you did some work involving
15 asbestos insulation removal, did you take fiber
16 measurements then?

17 A. Yes.

18 Q. And can you give me the range of
19 measurements that you found when you've made
20 measurements under the conditions of -- Was this
21 removal of asbestos or installation?

22 A. This describes a type of work that my
23 company has done for many years, and so there is
24 a very wide range of projects under which this
25 was done. The range probably went from less

1 than analytical detection method limit to maybe
2 as high as 18 or 20 fibers per cc. I don't have
3 those numbers right on the top of my head, but
4 that's a fair estimate.

5 Q. Now, when you say "18 to 20 fibers
6 per cc," is this a time-weighted average or a
7 measurement at a point in time?

8 A. That would be representative of a
9 particular sample time. When we are quoting
10 those numbers, we might take a series of
11 consecutive samples to calculate a time-weighted
12 eight-hour average. But under heavy loading
13 conditions, we would take shorter term samples
14 for a particular filter so as to be able to get
15 analytical results, prevent overloading.

16 So that individual 18 or 20 would not
17 come out of an eight-hour sample. That would
18 only be arrived at by taking a much shorter term
19 sample.

20 Q. Do you have an opinion as to the
21 amount of fiber released from the use of Owens
22 Corning Kaylo insulation that contained
23 asbestos?

24 A. Not in that general term.

25 Q. Are you familiar with Owens Corning

1 Kaylo?

2 A. It's been on some of the job sites
3 that we have encountered over the years.

4 Q. And have you conducted fiber
5 measurements on those job sites where Kaylo was
6 being installed or removed?

7 A. There would have been removal being
8 done in some of the job sites that were
9 measured. I don't believe I can remember
10 installation being conducted on the job sites.

11 I cannot tell you that I can
12 specifically sort out which asbestos may have
13 come from Kaylo insulation versus the asbestos
14 that came from mudded joint fittings that were
15 simultaneously being worked. So on a typical
16 job, it is not just one product that was
17 present.

18 Q. Do you have an opinion as to the
19 eight-hour time-weighted average that would -- a
20 worker would experience in working with Kaylo,
21 for example?

22 A. No.

23 Q. Do you have an opinion as to what an
24 eight-hour time-weighted average is in working
25 with any particular asbestos product, directly

1 working with it, installing it?

2 A. I believe all of our monitoring work
3 was done during the period when asbestos was
4 being removed, not installed, so I would not be
5 able to give you an answer to that question.

6 Q. Do you have any opinion as to what
7 the exposure would be on an eight-hour
8 time-weighted average for removal, then, for any
9 asbestos product?

10 A. For the -- About the only single
11 product jobs I can remember that we have
12 monitored would probably be floor tile asbestos.
13 And we have done several projects in which
14 monitoring was done for that.

15 Q. Would it be fair to state, from the
16 answers you have given me, that you have not,
17 then, directly tested, say, in a test chamber,
18 an asbestos insulation product to find out what
19 the fiber release from that particular product
20 is?

21 A. That's correct. All of our
22 monitoring was real world monitoring.

23 Q. Have you ever given an opinion in any
24 asbestos case in which you have testified that
25 the exposure that was described to you as an

1 industrial hygienist was not sufficient to have
2 accounted for the disease alleged to have
3 occurred?

4 THE WITNESS:

5 I'm sorry. I missed that question.
6 Could you repeat it?

7 (Whereupon, the question was read
8 back.)

9 A. No. I have not been asked that
10 question.

11 MR. FORMAN:

12 Q. Have you given an opinion in a prior
13 case involving asbestos in which you described
14 the conditions as highly hazardous?

15 A. Again, you are trying to quantify
16 hazard. I prefer to quantify risk. Hazard is
17 an inherent property that is either present or
18 absent.

19 Q. In which you have given an opinion
20 with respect to the degree of risk, then?

21 A. No.

22 Q. Do you claim to have competence to be
23 able to quantify the extent of a risk to a
24 worker exposed to asbestos?

25 A. I quantify exposures as an industrial

1 hygienist and make my comments and
2 recommendations based on whether or not the
3 exposures are consistent with regulatory
4 guidelines. I do not determine whether the
5 exposure, per se, has caused or not caused a
6 disease state.

7 Q. And the current regulatory guidelines
8 for asbestos exposure are what?

9 A. They would be regulations stipulated
10 by OSHA and by EPA.

11 Q. Right. And what are they?

12 A. For workers, the OSHA exposure limits
13 would be 0.2 fibers per cc as a time-weighted
14 eight-hour average. A typical common approach
15 of OSHA is to use one-half of that as an action
16 level; however, the determination at that number
17 is analytically difficult.

18 The NIOSH, National Institute of
19 Occupational Safety and Health, recommended
20 exposure limit, which also is pertinent, is 0.1
21 fibers per cc. The EPA criteria for the
22 occupancy after an abatement project is 0.01
23 fibers per cc. There may be some other limits.
24 If you wish, you can ask about them.

25 Q. Have you studied the historical

1 recommendations for levels of exposure to
2 asbestos that have been considered acceptable
3 guidelines?

4 A. Well, I have read them, and I'm
5 certainly familiar with them. I don't know that
6 I'd say that I have studied them.

7 Q. Do you know when the first
8 regulations were adopted for asbestos exposure?

9 A. I believe they date back in the
10 1950s.

11 Q. Do you know what the proposal was,
12 what the recommendation was?

13 A. The early recommendations, they were
14 counting particles, and it was particles per
15 cubic foot. And I don't recall the numerical
16 unit that was associated with that.

17 Q. Do you recall --

18 A. This predated OSHA.

19 Q. Do you recall what the numerical unit
20 was in terms of fibers per cc when OSHA was
21 adopted?

22 A. When OSHA started?

23 Q. Yes.

24 A. I'm recalling that it was five fibers
25 per cc, approximately, at that time for an

1 eight-hour exposure.

2 Q. Have you served as an expert to any
3 governmental bodies with respect to
4 recommendations for levels of asbestos exposure?

5 A. No. I have not.

6 Q. Have you ever given any testimony
7 before any state or regulatory -- or federal
8 regulatory agencies concerning asbestos in any
9 aspect?

10 A. No. I have not.

11 Q. In any prior case involving asbestos,
12 have you ever been retained by a defendant?

13 A. No. I don't believe so.

14 Q. In other types of work you have done
15 as an industrial hygienist, have you been
16 retained by defendants, outside of the tobacco
17 case, obviously?

18 A. Yes. I have.

19 Q. What types of work have you done for
20 defendants in your work as an industrial
21 hygienist?

22 A. Again, it would fall in the category
23 of toxic torts, other materials aside from
24 asbestos.

25 Q. Give me an example of something.

1 A. I'm sorry. I'm drawing a blank this
2 morning. There is a list of prior information
3 in terms of depositions and testimonies that
4 I've prepared that has some names on it that
5 would be illustrative, but I can't remember it
6 this morning.

7 Q. So far as I know, that was not given
8 to us. Is that something that you could provide
9 for us?

10 A. I can certainly provide that for you.

11 Q. Approximately, what percentage of
12 your time is spent on consulting for matters
13 related to litigation?

14 A. Percentage of my working time?

15 Q. Yes.

16 A. I'd estimate it may be in the range
17 of maybe 15 or so percent of total. I don't
18 keep my records that way.

19 Q. What is the name of your business?

20 A. The business name is NuChemCo, Inc.,
21 N-U-C-H-E-M-C-O.

22 Q. And how long has that company been in
23 existence?

24 A. It was incorporated in 1975.

25 Q. And how would you describe the

1 services that your company offers?

2 A. The services are considered as
3 technical consulting services.

4 Q. In the field of industrial hygiene?

5 A. Industrial hygiene, chemical and
6 environmental services.

7 Q. How many employees do you have?

8 A. Currently, three.

9 Q. And are they relatives of yours, or
10 these are non-related people?

11 A. One other technical person is Joseph
12 Jurinski, who is a son, and we have an office
13 person who is my daughter.

14 Q. So it's the three of you?

15 A. Yes, at present. Formerly, I had
16 other employees.

17 Q. What type of professional societies
18 do you belong to?

19 A. Societies associated with the kinds
20 of services that we provide. These would
21 include the American Industrial Hygiene
22 Association, American Chemical Society, Royal
23 Society of Chemistry, the American Academy of
24 Industrial Hygiene, American Conference of
25 Governmental Industrial Hygienists, Society of

1 Safety Engineers, International Society of
2 Indoor Air Quality. There may be a couple I
3 forgot.

4 Q. Does your membership in this group
5 relating to indoor air quality have anything to
6 do with exposure to passive cigarette smoke?

7 A. My membership is just a membership in
8 the group. It doesn't have any particular
9 relationship to any individual component.

10 Q. Does the group itself deal with
11 exposure to passive smoke as one of the issues
12 with which it is concerned?

13 A. Well, the group doesn't deal with
14 issues, but individual members of that
15 organization, some of them might be doing work
16 in that area. Others would be doing work in
17 other areas.

18 Q. Have you done work in that area?

19 A. No. I have not.

20 Q. What degrees do you have in terms of
21 educational background?

22 A. I have a Bachelors of Chemistry and a
23 Ph.D. in chemistry.

24 Q. How about certifications?

25 A. I have a professional certification

1 from the American Board of Industrial
2 Hygienists. That's Certified Industrial
3 Hygienist, is the designation, and Certified
4 Hazard Control Manager.

5 Q. Have you published any literature on
6 the subject of asbestos?

7 A. I don't believe I have a publication
8 on asbestos. I have given a talk on it maybe
9 once at a local professional organization
10 meeting, but it wasn't any written format.

11 I have one publication that is on a
12 different kind of silicate, but it references
13 asbestos in that publication.

14 Q. What is the nature of that silicate?

15 A. It is a mineral called erionite,
16 E-R-I-O-N-I-T-E.

17 Q. How many total publications do you
18 have in peer review journals?

19 A. I think it is a little over two
20 dozen.

21 Q. And would you say that, then, only
22 one of them deals with a silicate that is --
23 like erionite, that some would consider it like
24 asbestos, then?

25 A. Yes. The others are on different

1 topics.

2 Q. Do you have any publications relating
3 to any aspect of cigarette smoke or tobacco?

4 A. No. I don't.

5 Q. Do you consider yourself to have
6 expertise in the field of epidemiology?

7 A. No. I'm not an epidemiologist. I'm
8 an industrial hygienist and chemist.

9 Q. How about toxicology?

10 A. Well, I'm an industrial hygienist
11 and, as such, utilize toxicology information,
12 but I would not classify myself as a
13 toxicologist, per se, rather as an industrial
14 hygienist.

15 Q. Vital statistics?

16 A. No. I am not a statistician of any
17 type.

18 Q. And, obviously, not a medical doctor?

19 A. That is correct.

20 Q. We received a few days ago a list of
21 what was described as your reliance material.

22 Did you prepare that list?

23 A. I assisted in the preparation. I
24 didn't do the complete preparation myself, no.

25 Q. Let me hand you that and see if that

1 is a copy of your reliance material.

2 A. Yes.

3 MR. FORMAN:

4 Let's have this marked Exhibit 2.

5 (Exhibit 2 was marked.)

6 MR. FORMAN:

7 Q. You said you assisted in preparation
8 of this. Who else was involved in preparing it?

9 A. The attorneys' offices assisted.

10 Q. When was it prepared?

11 A. I don't know the exact date it was
12 updated. So there was a series in which other
13 materials would be added as they became
14 available. For example, the last entry lists
15 claims files, and that list was updated during
16 this year. Earlier entries of the literature
17 documents were in the list that was initiated as
18 a computer document during last year. I don't
19 know the exact date.

20 Q. Can you identify on this list
21 articles which you had in your possession prior
22 to being contacted about this case?

23 A. I haven't looked at it that way. I
24 don't know whether I could or couldn't. I
25 requested a lot of information from the

1 attorneys' collection of articles. And I had
2 some literature articles myself, but my general
3 thrust of literature work was not necessarily
4 along the line of collecting of a lot of
5 epidemiological records. It was more focused on
6 industrial hygiene work.

7 Q. Do you think you could go through
8 this and mark the articles that you had
9 beforehand? Or if you couldn't, that's fine.

10 A. I'm not sure that I could do that,
11 no. I haven't kept that collection separate in
12 two different bins.

13 Q. Could you tell me approximately what
14 percentage of the articles on this list were
15 articles that you had before being contacted
16 about appearing as an expert in a tobacco case?

17 A. Percentage would be low, probably in
18 the 20 percent or so range. I'm just making an
19 estimate at this point. That is not a hard
20 number.

21 Q. What were the criteria that you used
22 for requesting the additional articles that make
23 up the list?

24 A. The criteria were based on
25 discussions that I had with the attorneys in the

1 case that indicated an emphasis was to look at
2 epidemiological aspects of the subject matter.

3 Q. Did you advise them that this was
4 beyond your field of expertise?

5 MR. KEMNA:

6 Objection to form.

7 A. No. I did not.

8 MR. FORMAN:

9 Q. Is it beyond your field of expertise?

10 A. No. I'm fully capable of reading
11 technical articles.

12 Q. And giving opinions on matters of
13 epidemiology?

14 A. I can give opinions on articles that
15 I read in terms of the context in which I feel
16 competent to give an opinion.

17 Q. And do you feel competent giving
18 opinions relating to the field of epidemiology?

19 A. I can give opinions on pertinent
20 questions that are asked specifically, but I
21 can't answer such a general question with one
22 answer.

23 Q. Have you read all of the articles on
24 this list?

25 A. I have not read all of those

1 articles. I have reviewed, in most cases, as
2 far as the abstracts.

3 Q. Did you bring any of these reliance
4 materials to the deposition with you?

5 A. No. I did not.

6 Q. Could you identify what you found
7 significant in any of these articles, if we go
8 down the list, from memory today?

9 A. I may be able to remember things for
10 some and not for others.

11 Q. I'd like for you to take the list and
12 tell me, start with the first one, what is
13 significant with regard to your opinion in this
14 case.

15 MR. KEMNAT:

16 I will just make an objection to this
17 line of questioning to the extent that it
18 unfairly puts Dr. Jurinski in a position of
19 trying to remember verbatim every matter that he
20 has reviewed in the context of consulting in
21 this case without the benefit of having the
22 articles available for at least some extent of
23 review to refresh his recollection.

24 A. Okay. The --

25 MR. FORMAN:

1 Q. Let me ask you before you start: Is
2 there any reason you did not bring the articles
3 to the deposition?

4 A. The articles are in the public
5 domain, and they are extremely large in number.
6 I believe they are readily available as
7 identified.

8 Q. All right. Are you able to identify,
9 then, without having benefit of the articles in
10 front of you, what it is about each of those
11 articles you found to be significant insofar as
12 your opinions in this case are concerned?

13 A. I could not do that for each and
14 every article, but I could, perhaps, remember
15 for some of the articles what is the information
16 of substance in there which was of interest.

17 Q. Why don't you take a minute to look
18 at the list and tell me about those articles and
19 identify them that you can do that for.

20 A. Okay. I will, for the sake of
21 conservancy of time, try and do this rapidly
22 without it being a thorough search because I
23 will frankly admit that my memory does not
24 recall every article in here.

25 MR. KEMNA:

1 Why don't I suggest, can we just take
2 a brief break just for bathroom purposes, I
3 mean, as long as we have got a couple of minutes
4 here? And you can just go ahead and scan
5 through that.

6 (Off the record.)

7 (A recess was taken.)

8 MR. FORMAN:

9 Q. The question was, essentially, could
10 you go through that list of articles on your
11 list of reliance materials and tell me what it
12 is about each article that you rely on for any
13 opinion that you expect to give in this case.

14 A. Okay. Well, as I had prefaced, the
15 task I was asked to do was to review the data
16 files for the quality and sufficiency of the
17 information contained therein in reference to
18 exposure data and investigations of health
19 hazards that might have been associated with the
20 individual persons.

21 So, within this list, not all of
22 these articles would specifically bear on that
23 task, but let's start with the first one that is
24 here, and we can go down some of these and see
25 if that gives a sufficient flavor of what this

1 list needs.

2 "Asbestoform Fibers-Nonoccupational
3 Health Risks," Committee on the Board of
4 Toxicology, the National Research Council and
5 National Academy Press, Washington, 1984. This
6 document is one that I had included on the list
7 from my own literature collection. It is a
8 document that I reference because the National
9 Academy of Sciences has pulled together a good
10 compendium of information. Issue date, 1984, so
11 it is only containing information prior to that
12 time.

13 And they do talk about studies that
14 have been done, risks that have been associated
15 with different levels of asbestos exposures.

16 And the National Academy is a body which I
17 consider to be composed of credible scientists
18 in the nation, and I believe this is a credible
19 document to believe the information from.

20 Q. All right. My question, though, is a
21 little different than that. I'm wanting to know
22 what it is within the article, if anything, that
23 you rely on for any opinions in the case. I
24 assume you -- Let me preface that. I'll come
25 back to that question, but I assume, by the fact

1 that you put these articles on what you call
2 your list of reliance materials, that you find
3 them to be reliable and authoritative; is that
4 correct?

5 MR. KEMNA:

6 Objection to form.

7 A. Perhaps, there is a semantic problem
8 with the title of the list. These articles are
9 reference materials that contain technical
10 information from the published literature that
11 bear on aspects of this case. My specific part
12 of the case does not blanket the entire totality
13 of the case, but just a portion of the case. So
14 these represent materials referenced during work
15 for this case. And it was my understanding that
16 was the kind of information that should be
17 provided. So that's what this list represents.

18 MR. FORMAN:

19 Q. All right. Are there any articles
20 that are on your list of reliance materials that
21 today you do not consider reliable and
22 authoritative sources of information?

23 MR. KEMNA:

24 Objection to form.

25 A. The list contains materials and

1 articles that were published over a long period
2 of time, and early articles don't have the
3 benefit of information developed at a later
4 date. So, many times, technical articles must
5 be read in context of the time frame in which
6 they were published. And so the information has
7 to be kept in line with that kind of changing
8 technical database.

9 So some articles in here that are old
10 probably are not reflective of current
11 knowledge.

12 MR. FORMAN:

13 Q. Could you go through the list, then,
14 and identify for me any articles that you would
15 consider today not to be reliable and
16 authoritative?

17 A. Well, "reliable" is the word I'm
18 having a problem with in the way you phrase that
19 question. They may have been reliable at the
20 time. And so that does not, in my mind, make
21 them unreliable if they become dated.

22 Q. All right.

23 A. They are reliable for the time at
24 which they were published.

25 Q. All of them? That's what I'm trying

1 to get at.

2 A. That's what I'm saying. All of these
3 were reliable at the time. They came out of the
4 peer-reviewed literature by practicing
5 scientists. And at the time that that was
6 published, it went through the normal processes
7 of technical publication.

8 Now, that's what we have to work with
9 in the field of science. It is a moving target.

10 Q. All right. So there is nothing on
11 the list that, if you examine the list, that you
12 would say, this article should never be
13 included, this is just not reliable information,
14 we ought to discard it? That's what I'm trying
15 to get at first.

16 MR. KEMNA:

17 Objection to form.

18 A. I don't typically work that way. I
19 typically say, when we find an article, read it
20 with an open mind and review it and evaluate it.
21 Don't take a stand on the front end that this is
22 unreliable and throw it away.

23 MR. FORMAN:

24 Q. As I understand it, you only had
25 about 20 percent of those articles before you

1 became involved in the case; is that correct?

2 A. That's an estimate, right.

3 Q. Did you form an opinion about the
4 reliability of the articles you were given to
5 review that constituted the other 80 percent?

6 MR. KEMNA:

7 Objection to form.

8 A. I think I answered that in the last
9 answer where I said, I take all of the articles
10 that have been published in the peer-reviewed
11 literature. I don't classify them as acceptable
12 or non-acceptable when I begin. I read them.

13 MR. FORMAN:

14 Q. Well, you have read them all now,
15 haven't you?

16 A. I have read the abstracts of them.
17 Some of them I might have gone farther than the
18 abstract.

19 Q. Is there anything you have read thus
20 far that would lead you to believe that any of
21 those articles are not reliable articles?

22 MR. KEMNA:

23 Objection to form.

24 A. Not in the way that I have told you I
25 consider the word "reliable" to mean.

1 MR. FORMAN:

2 Q. All right. Going back to the
3 question I asked you first, before we got into
4 that discussion, can you identify what it is
5 about the articles that you relied on for any
6 opinions in this case?

7 A. I don't believe these articles
8 specifically dealt with the task that I was
9 asked to perform in this case. They, instead,
10 provided a technical background about the
11 concerns of asbestos respiratory disease and
12 cancer and about cigarette impacts on
13 respiratory health.

14 I'm not commenting in my opinions
15 about those particular subjects. Those will be
16 left to medical specialists or others who can
17 talk about disease causation. I talk about
18 exposures to materials, and I have been asked to
19 evaluate the information available in the files
20 to comment on the exposures to hazardous
21 materials that could have impacted individual
22 people's lungs.

23 Q. Are any of the articles on the list
24 directly relevant to the opinions you intend to
25 express in this case?

1 MR. KEMNA:

2 Objection to form.

3 A. They are not specifically related to
4 my opinion of the file contents that are in the
5 list of files that I reviewed.

6 MR. FORMAN:

7 Q. Who is the attorney who gave you the
8 80 percent of the articles that appear on the
9 list?

10 A. The articles were assembled and
11 transmitted to me by an associate in Mr. Kemna's
12 office. And his technical staff who assembled
13 that, I have no idea who was actually involved
14 in pulling the articles from collections and
15 making copies that were subsequently shipped to
16 me.

17 Q. Over what period of time were you
18 given these articles?

19 A. I'm estimating I probably received
20 articles over a two- to three-month period. I'm
21 not sure of that, but that is an approximation.

22 Q. When you were given the articles,
23 were you asked to provide any comment about
24 whether you thought the articles were useful to
25 you in this case?

1 A. No. I was not.

2 Q. Were you asked to provide any summary
3 of the articles?

4 A. No.

5 Q. Have you prepared any summary --

6 A. No.

7 Q. -- of your opinions about the
8 articles?

9 A. Not of the articles, no.

10 Q. Have you prepared any notes about the
11 contents of the articles?

12 A. No. I focused my efforts on the case
13 files.

14 MR. KEMNA:

15 Let me just interject that materials
16 requested in advance of the deposition of Dr.
17 Jurinski pursuant to the notice that has been
18 marked as an exhibit in the case asked for all
19 documents relied upon or reviewed in connection
20 with his expert opinion. So just for the
21 clarification, Dr. Jurinski has described to you
22 the nature of the items occurring on the list.

23 MR. FORMAN:

24 Q. Well, I guess I'm having trouble, and
25 I'm not trying not to be critical, but I'm

1 having trouble finding out which ones you
2 actually relied on versus reviewed. Could you
3 identify those?

4 A. No. As I said, I think, perhaps, the
5 semantics of the title was giving a problem.
6 They, perhaps, should have best been labeled
7 "reference." They provided general background
8 information and reference pertinent to the
9 subject matters of the case. They did not
10 provide specific information pertinent to my
11 opinion.

12 Q. None of them did?

13 A. Correct.

14 Q. Did you request any materials you did
15 not receive?

16 A. I can't remember.

17 Q. Well, what would you have requested
18 you might not have received?

19 A. There may have been an article that I
20 asked, did you have a copy of or could you get a
21 copy of, and I didn't get it. But I can't say
22 that that -- I mean, that is an example of what
23 I might not have received. I don't recall off
24 the top of my head that I did not receive things
25 that I asked for.

1 Q. Did you ever review any tobacco
2 documents, internal company documents?

3 A. I'm not sure what you mean by
4 "documents."

5 Q. Did you ever review any documents,
6 for example, of the Philip Morris Company or any
7 of the companies involved in this case?

8 A. No.

9 Q. Do you know which companies are
10 involved in the case?

11 A. I have seen a list once. I don't
12 recall the names. You know, the list contains a
13 large number of tobacco companies, but I
14 couldn't quote it to you.

15 Q. At any time, then, just to be clear
16 for the record, have you looked at any, what I'm
17 going to call, internal memoranda,
18 correspondence, documents of the companies
19 themselves, that is, the defendants in the case?

20 A. No. I have not.

21 Q. Have you requested any such
22 documents?

23 A. No. I have not.

24 Q. To your knowledge, have you ever
25 evaluated any of the work sites on which any of

1 the claimants who have made a claim against
2 Owens Corning were employed?

3 A. I have not cross-checked that to give
4 you a direct answer. The only possible instance
5 I can bring to mind from the list of claims
6 files involved one merchant mariner who was on
7 many ships, and there was a list of ships. I
8 have inspected some Merchant Marine ships. I'm
9 not sure if it would include any of the ones
10 that were on his list.

11 Q. Would it be fair to state, then, to
12 your knowledge, you have not reviewed the work
13 sites that the claimants who made a claim
14 against Owens Corning and who Owens Corning
15 ultimately paid money to in settlement or in
16 satisfaction of judgment?

17 MR. KEMNA:

18 Objection to form.

19 MR. UPSHAW:

20 Rick, you are talking about 450,000
21 claims.

22 MR. FORMAN:

23 Right.

24 MR. UPSHAW:

25 Okay.

1 MR. FORMAN:

2 I just want to know if there is any
3 specific work site that he says, yes, I know I
4 worked on that job site.

5 MR. UPSHAW:

6 I'm just saying that he may be
7 thinking you are talking about the claimants or
8 plaintiffs, the persons who are plaintiffs in
9 this lawsuit, you are talking about 450,000
10 nationwide claimants.

11 MR. FORMAN:

12 Yes. That's correct.

13 A. I specifically have not done it for
14 this case. I cannot tell you because I don't
15 know the 450,000 locations, and I have never
16 inspected one of them.

17 MR. FORMAN:

18 Q. Are you an author or co-author of any
19 of the articles on this reliance list marked as
20 Exhibit 2?

21 A. No.

22 Q. What percentage of those articles
23 would you say directly deal with issues of
24 industrial hygiene?

25 A. It is a small percentage, perhaps 10

1 percent. I haven't broken them out that way.

2 Q. Was this list prepared from any
3 larger list of material and culled down to this
4 list?

5 A. Not to my knowledge. I added
6 materials to the list that were reflective of
7 documents that I had in my own personal
8 collection.

9 Q. Have you produced this list of
10 reliance material in any other case?

11 A. No.

12 Q. Can you identify anything in the
13 abstracts or in the articles that you've read
14 when you reviewed them which you could say now,
15 today, in my opinion, that was just wrong
16 information or wrong science?

17 MR. KEMNA:

18 Objection to form.

19 MR. FORMAN:

20 Q. It's incorrect?

21 MR. KEMNA:

22 Objection to form.

23 A. No, subject to the earlier discussion
24 that we had on that point.

25 MR. FORMAN:

1 Q. That is, that it may have been
2 correct at the time it was prepared, but
3 subsequent science has made it outdated?

4 A. That is correct. Things change.

5 Q. Other than that, nothing else?

6 A. No.

7 Q. I noticed that there are included on
8 here two Surgeon General Reports, one from 1985
9 and one from 1989. Do you recall that?

10 A. Yes. I do.

11 Q. Did you select those to be included?

12 A. No. I did not.

13 Q. Did you review those Surgeon General
14 Reports?

15 A. At the time they were issued, I read
16 an either summary or abstract of the reports
17 back at their publication dates because it is of
18 interest in my field. I have subsequently
19 recently reread the 1985 conclusions of the
20 Surgeon General, but I, for the most part, have
21 not fully read every word in either of those two
22 reports.

23 Q. Is there anything about the material
24 that you have read in those reports from 1985 or
25 1989 that you consider unreliable or incorrect?

1 MR. KEMNA:

2 Objection to form.

3 A. No, subject to the same information
4 we had about reliability in our prior questions
5 and answers.

6 MR. FORMAN:

7 Q. Is there anything that you can recall
8 now that, at the time it was written, it would
9 have been reliable, but now you would consider
10 it unreliable from those two reports?

11 MR. KEMNA:

12 Objection to form.

13 A. Well, the subjects keep being
14 investigated and new information keeps being
15 added to the collection. So when someone today
16 puts together all of the information and makes a
17 comment on them, they are including a larger set
18 of data than what was done earlier. And so
19 things change.

20 An example might be estimation of
21 averages. And since we now have many more
22 people who have been studied, the averages and
23 the uncertainty in the averages will probably
24 change. So these numbers have a time factor to
25 them.

1 Q. When you say "averages," averages of
2 what?

3 A. People compute averages. Let's say
4 the average age of smokers or the average age of
5 people exposed to asbestos. These change. And
6 so the current information does not necessarily
7 agree with the earlier information. And that's
8 just normal.

9 Q. Do you know why there were no other
10 Surgeon General Reports than the one from 1985
11 or 1989 that were selected for your list of
12 reference materials?

13 A. No. I have no idea.

14 Q. Do you consider yourself to have
15 expertise on diseases caused by smoking?

16 A. No. I'm an industrial hygienist and
17 chemist.

18 Q. Do you consider yourself to have
19 expertise on the degree of increased risk of
20 disease caused by smoking?

21 A. I have read articles about the
22 increased risk. As such, I am not
23 unknowledgeable of that kind of information, but
24 I would not classify myself as someone who has
25 done a risk study from an epidemiological plan

1 to try and arrive at such material.

2 Q. Do you believe that smoking causes
3 lung cancer?

4 A. Yes. I believe it causes lung cancer
5 within the definition of cause that is used by
6 statisticians and epidemiologists where, when
7 they find a strong positive correlation, they
8 say there is a cause.

9 Q. Do you accept smoking as a cause of
10 lung cancer?

11 A. I do, yes. I don't know how
12 molecularly it happens.

13 Q. Do you have an opinion about the
14 degree of risk, increased risk of lung cancer,
15 from smoking?

16 A. The degree?

17 Q. Yes.

18 A. I don't have an opinion on it, no.

19 Q. Did either of these Surgeon General
20 Reports provide any information that would allow
21 you to give an opinion about the degree of
22 increased risk of lung cancer from cigarette
23 smoking?

24 A. No. Because, as I said, I'm not an
25 epidemiologist to describe risk calculations and

1 the measurement of control groups and target
2 groups, cohorts, etcetera. Instead, I'm
3 focusing my work on the industrial hygiene
4 review of case file material to look at what
5 were possible exposures to persons involved in
6 this case that might have had an impact on the
7 respiratory tract.

8 Q. Did you bring the claim files with
9 you today?

10 A. No. I did not bring the individual
11 files.

12 Q. And are you able today to give me an
13 opinion on a file-by-file basis of what your --
14 what testimony you expect to give about each of
15 these claim files?

16 A. I do have with me a series of notes
17 that I printed out from my computer file that I
18 took as I was reading the individual claims. I
19 could do that for you.

20 Q. All right. Could I see that, then?

21 A. Yes. If I could describe this to
22 you, you can see what it is. I received files
23 in two separate transmittals. I received some
24 during the year of 2000. I received some during
25 the year of 2001. So the individual two groups

1 of files that I received are separately
2 considered on these two summary sheets.

3 For the first group received during
4 2000, I received seven files that are identified
5 by name in the left-most column. The types of
6 information looked for in the individual file is
7 described by the headers as they go across.

8 Q. When was that prepared?

9 A. This was prepared contemporaneous
10 with my review of the file as these files were
11 received. This was printed yesterday in
12 preparation for coming here today.

13 Q. But it was prepared in the year 2000?

14 A. It was a computer file that I -- I
15 don't know when you say "prepared" what your
16 definition of "prepared" is. It was initiated
17 in the year 2000. It was added to as time went
18 along.

19 Q. When were you given the claim files?

20 A. The individual claim files, I am
21 trying to remember the date in the first batch.
22 I think the first batch was received in the late
23 summer of 2000. I don't have an exact date when
24 I received it. And the second batch was
25 received, I believe, in January of 2001.

1 Q. Which files did you receive in the
2 year 2000?

3 A. The files I received are these seven
4 here.

5 MR. FORMAN:

6 Let's mark that as Exhibit 3.

7 (Exhibit 3 was marked.)

8 THE WITNESS:

9 It is a two-page, two extended page,
10 document.

11 MR. FORMAN:

12 Q. And the information that is contained
13 on this document that has been marked as
14 Exhibit 3, this two-page document, was prepared
15 contemporaneously with your receipt of these
16 files?

17 MR. KEMNA:

18 Objection.

19 A. No. That's not what I said.

20 MR. FORMAN:

21 Q. All right. What did you say?

22 A. I said it was prepared
23 contemporaneously with my reading of the files.

24 Q. When did you read the files?

25 A. Sometime after I received them. It

1 depended on when I had some time to work on this
2 project in conjunction with the other project
3 work that I do.

4 Q. When did you finish your review of
5 these claim files?

6 A. I don't know.

7 Q. Did you finish it before the year
8 2001?

9 A. Did I finish the review of these
10 particular files?

11 Q. Yes.

12 A. Yes.

13 Q. So your work that's reflected on this
14 Exhibit 3 would have been completed before the
15 year 2000, essentially?

16 MR. KEMNA:

17 Objection to form.

18 A. It would have been completed. There
19 were probably a couple of other entries made at
20 a later date when I went through these files
21 that I received in the second transmittal and
22 found some other information that I desired to
23 record in the earlier file. So it was a living
24 computer file.

25 MR. FORMAN:

1 And let's mark this as Exhibit 4.

2 Q. How many pages is this?

3 A. That's three, three extended pages.

4 (Exhibit 4 was marked.)

5 MR. FORMAN:

6 Why were we not given this before
7 now?

8 MR. KEMNA:

9 You were provided with the reports
10 that were required to be exchanged between
11 parties in advance of Dr. Jurinski's deposition
12 descriptive of his opinions to be offered in the
13 case. And that was in compliance with what the
14 Court had ordered.

15 What you see before you now is, as
16 Dr. Jurinski had described it, a way of him
17 recording notes as extractions of information
18 from those files. But, if you will look at
19 those documents, and Dr. Jurinski can
20 characterize them for himself, you will not see
21 the statement of any particular opinions. This
22 is a way of organizing information.

23 MR. FORMAN:

24 I just think this is in complete bad
25 faith that we were not given this before. When

1 we got this list of reliance material earlier
2 this week, I immediately contacted Bruce and
3 complained that they had identified 18 claim
4 files and that we had not been given any
5 information about what his opinions or
6 statements were going to be about any of those
7 claim files specifically. And then, I walk in
8 here, and I'm given this that he's obviously had
9 for some period of time.

10 MR. UPSHAW:

11 That is not what that is. That is
12 not his opinions. Those are extractions from
13 the existing claim files. It is just take a
14 name here and put a name over here. It is not
15 an opinion. If he worked on a certain date, he
16 worked on a certain date in that. If he was
17 exposed on a certain day, he was exposed then.

18 It is not opinion, is it, Doctor?

19 Aren't those extractions from the file?

20 THE WITNESS:

21 There are no opinions in there.

22 There are observations of file contents or lack
23 thereof.

24 MR. FORMAN:

25 Well, it is obvious, if we had had

1 this beforehand, we could have prepared better
2 for the deposition. This was a kind of
3 information that I was looking for, what is he
4 going to have to say about the individual claim
5 files. And we were told, absolutely nothing.
6 And then I walk in here, and I get these
7 spreadsheets of all of this information.

8 MR. KEMNA:

9 Now, let's keep the record straight.
10 The understanding is that Dr. Jurinski was going
11 to be testifying regarding individual claims
12 files. That has never changed since the point
13 that the disclosure was made to you about his
14 opinions. And the reliance list, as you recall,
15 contains the individual identification of claims
16 files that Dr. Jurinski has reviewed. Those
17 very same claims files are the ones that were
18 produced to us in discovery from your office, so
19 that during the entire period of time that you
20 had the reliance material produced to you, and
21 you also had Dr. Jurinski's expert report in
22 hand, you had the opportunity to review the
23 exact same claims files that he expects to
24 testify to today in the deposition and may
25 relate to his testimony at trial.

1 When you followed up with Shook,
2 Hardy's office this week regarding your position
3 on the extent of the disclosure of Dr.
4 Jurinski's opinions, you were once again
5 informed that his intention was to testify
6 regarding the individual claims files. These
7 documents that you have marked as
8 Exhibits 3 and 4 are simply extractions of
9 information from the claims files not containing
10 the opinions of Dr. Jurinski that he may offer
11 in the case. It is up to you to make the
12 inquiry necessary to find out what Dr.
13 Jurinski's opinions are. If anything, this is a
14 means of condensing the approach to examining
15 Dr. Jurinski.

16 MR. FORMAN:

17 Well, it is quite obvious we wanted
18 to know what he thought was significant about
19 the individual claim files, and that's what we
20 were complaining about. And we were given
21 absolutely no information on any specific claim
22 file.

23 MR. KEMNA:

24 The requirements for disclosure here
25 are the opinions of the experts to be offered at

1 trial, not the notes that may be generated
2 during the course of review of underlying
3 materials used as the foundation for opinions.

4 Just for clarification, let's have
5 marked as an exhibit at this point, if there is
6 no objection, a letter dated February 20th,
7 2001, directed to Mr. Richard Forman, of Forman,
8 Perry in Jackson, Mississippi, sent by Bruce
9 Tepikian, of Shook, Hardy & Bacon, regarding Dr.
10 Jurinski's opinions expected to be offered on
11 the Owens Corning claims files today at the
12 deposition.

13 Just for clarification, the letter
14 was apparently transmitted immediately by fax on
15 the date stated.

16 (Exhibit 5 was marked.)

17 (Off the Record.)

18 MR. FORMAN:

19 I think we also have in this case a
20 Case Management Order that required the expert
21 to provide his expert opinions and the grounds
22 for the opinions. We were not given any
23 opinions or the grounds for any opinions for any
24 of these 18 claim files before today, nothing.
25 That's what I complained about when I talked to

1 Bruce the other day. Whether you call this an
2 opinion or not, it obviously is going to be the
3 grounds, or basis, of his opinions, and we were
4 not given that.

5 MR. KEMNA:

6 You were given the specification of
7 exact claims files that would form the basis for
8 Dr. Jurinski's opinions. What you see before
9 you in Exhibit 3 and 4 is simply a series of
10 notes taken from his review of those very same
11 claims files. The claims files have been in
12 your possession the entire course of this case
13 and that you had the opportunity to review in
14 advance of the deposition and prepare yourself
15 for inquiring of Dr. Jurinski's opinions today.

16 My position would be is that you take
17 a look at these notes. You can take whatever
18 advantage you can of the fact that Dr. Jurinski
19 has made it a very organized approached to
20 step-wise going through the claims files and
21 make an inquiry.

22 MR. FORMAN:

23 Obviously, we are going to reserve
24 the right to take this up further.

25 MR. KEMNA:

1 I'll take the position at this point
2 that we have, obviously, entirely complied with
3 the requirements in this case for advanced
4 disclosure of the experts' opinions by virtue of
5 an expert report and follow-up communications
6 with plaintiffs' counsel.

7 MR. FORMAN:

8 And to be clear, you are taking the
9 position that you complied with the Case
10 Management Order in providing us with the
11 opinions he is expected to give in the case and
12 the summary of the grounds for the opinions.
13 You've provided that --

14 MR. KEMNA:

15 The opinions to be offered were
16 described by virtue of the original expert
17 report and subsequent communications with your
18 office, discussions of the issue with the
19 magistrate in advance of the deposition. And to
20 the extent of my understanding of the course of
21 activities in this case related to discovery, it
22 is my understanding that it is in compliance
23 with discovery.

24 MR. FORMAN:

25 Q. Do you have an extra copy of this

1 that we can go over, that I can look at?

2 A. I have only the copy that I printed
3 out.

4 MR. FORMAN:

5 All right. Could we make some extra
6 copies of it?

7 MR. KEMNA:

8 Certainly.

9 (Off the Record.)

10 (A recess was taken.)

11 MR. FORMAN:

12 Before we start with any more
13 questions, I'd like to have marked as Exhibit 6
14 a letter dated February 21, 2001 that I sent to
15 Bruce Tepikian in response to the letter which
16 has been marked as Exhibit 5. And I believe
17 mine has a copy of Bruce's letter of February 20
18 attached to it

19 (Exhibit 6 was marked.)

20 MR. KEMNA:

21 Can we hold on for just a second?

22 (Off the Record.)

23 MR. KEMNA:

24 Rick, if I might just interject
25 something.

1 We just had a document marked as
2 Exhibit 6 offered by Mr. Forman regarding
3 correspondence on February 21st of Bruce
4 Tepikian to Mr. Forman. There is a follow-up
5 fax in response to Mr. Forman's letter that I
6 don't currently have available but hope to have
7 attached to the deposition before we recess.
8 Thank you.

9 MR. FORMAN:

10 Q. Dr. Jurinski, did you have any
11 discussion with anyone prior to coming to your
12 deposition today about printing out this
13 material that has been marked as Exhibit 3 and
14 Exhibit 4 and making it available prior to the
15 deposition?

16 MR. KEMNA:

17 Let me just interject an objection
18 that there is currently an order in place in
19 this case relating to the limitation on
20 questions posed to the witness regarding
21 communications between counsel and the expert
22 witness. And the questions that you are asking
23 do not fall within the permitted area of
24 questioning as ordered by the Court on September
25 8th, 2000. And we might as well just have this

1 marked as an exhibit.

2 (Exhibit 7 was marked.)

3 MR. FORMAN:

4 Are you instructing him not to
5 answer?

6 MR. KEMNA:

7 Pursuant to the Court's order, I
8 think we both recognize where permissible areas
9 of questioning are. And my position is that
10 this is ~~not~~ a permissible area of questioning
11 pursuant to the Court's order, and I'm advising
12 Dr. Jurinski of that fact.

13 MR. FORMAN:

14 Q. Dr. Jurinski, are you willing to
15 answer the question?

16 THE WITNESS:

17 Could you repeat the question,
18 please?

19 MR. FORMAN:

20 Would you read it back, please.

21 (Whereupon, the question referred
22 to was read.)

23 MR. KEMNA:

24 Just for purposes of preserving the
25 objection on the basis of the Court's order

1 entered in this case specifically relating to
2 permissible areas of questioning at depositions,
3 I will just reassert the objection.

4 And, Dr. Jurinski, you are advised
5 that the Court does not require responses to
6 those types of questions.

7 A. If this is a question outside the
8 bounds of the deposition, I do not desire to
9 answer.

10 MR. FORMAN:

11 Q. So, rather than press the matter
12 further on the record, can we agree that you
13 refuse to answer the question, then?

14 A. In the context as the discussions
15 have been made, yes.

16 Q. You have Exhibit 3 before you?

17 A. Yes, I do.

18 Q. The first name that appears on there
19 is Jack Cummings; is that correct?

20 A. Correct.

21 Q. Do you intend to rely on any of the
22 information contained in Exhibit 3 or in
23 Exhibit 4 as a basis for any opinion you expect
24 to give in this case?

25 A. The information in these exhibits is

1 a summary of information that was pulled
2 together by myself and an assistance to help me
3 remember the contents of the case file and the
4 database information sheets that were contained
5 in the individual files. And, as such, I do not
6 expect to rely upon these individual sheets for
7 other than a recollection of what is in the case
8 file material themselves.

9 Q. Could you testify about each of these
10 cases and about what opinions you would give on
11 each case individually without benefit of
12 Exhibits 3 and 4 in front of you?

13 MR. KEMNA:

14 objection.

15 A. I could do that in the presence of
16 the case file materials themselves, which are
17 the original source documents for these
18 summaries. Alternately, I could use these
19 summaries.

20 MR. FORMAN:

21 Q. To be clear for the record today, if
22 I were to ask you to close up, put away,
23 Exhibits 3 and 4 and ask you to tell me
24 everything you found significant in the file of
25 Jack Cummings, could you do that?

1 MR. KEMNA:

2 Objection.

3 A. In response to the intent of your
4 question, I could comment on the generic
5 components that are found within the collection
6 of case files. And I would not recall the
7 individual specific details without having some
8 source of physical reference to either the case
9 file material itself or to my summary sheet of
10 that case file.

11 MR. FORMAN:

12 Q. All right. Let's look at Exhibit 3.
13 As you move across from left to right, I see
14 there is an OC I.D. number, then there is a
15 city. What does that represent?

16 A. Within the files, there was listed a
17 city referencing the location of what I believe
18 to be the individuals named in the left-most
19 column.

20 Q. Now, you have Stratford and Shelton.
21 I'm not sure what that refers to there.

22 A. If you refer to the key that is on
23 the top of the exhibit, information that is in
24 italicized font was information that was found
25 from the database printout. Information which

1 is in the normal font was found from the other
2 materials in the case file which I consider to
3 be the original source documents of information
4 from which the database must have been
5 extracted.

6 And in looking at that specific
7 entry, it is seen that the city was identified
8 for Mr. Cummings as Stratford, Connecticut in
9 the database. However, when I reviewed the case
10 file material, I found the city identified as
11 Shelton instead of Stratford.

12 So there seemed, in my impression,
13 and this now is an opinion based on those
14 observed facts, that there was a difference in
15 the information contained within the database
16 sheet and the information contained within the
17 backing-up case file information which
18 represented the original source data.

19 Q. All right. As we go across to the
20 column "employer," it says Raymark.

21 A. Yes.

22 Q. By that, does that indicate that is
23 the only employment he ever had?

24 A. That indicates that is the employer
25 that I found recorded in the case file material,

1 but, because it is not italicized, I did not
2 find that in the database summary.

3 Q. So that is the only information you
4 have about his employment?

5 A. Yes.

6 Q. That is his only employer?

7 A. Yes.

8 Q. And whether there were or were not
9 others, you do not know; is that correct?

10 A. That's the limited information that
11 was available in the file.

12 Q. All right. Under a caption that says
13 C-H-E-M exposure, would you explain what that
14 represents.

15 A. This refers to chemical exposure and
16 refers to hazardous agents that have been
17 identified within the case file or the database
18 to which this person was reportedly exposed.

19 Q. And what does the next column
20 represent?

21 A. Exposure concentration.

22 Q. And you have a question mark there.

23 A. And the presence of the question mark
24 means there was no information. And in a
25 next -- Well, I'm leading you.

1 Q. Now, going across to the smoker
2 information, you have recorded yes, and that for
3 pack years, you have got 33 years at one and a
4 half packs a day and that he quit in 1989; is
5 that correct?

6 A. That's correct.

7 Q. When was that information -- For
8 what -- What was the time frame that that
9 information was available in the records? In
10 other words, was this a record from 1996 or a
11 record from 1995 or 1990, or do you know?

12 A. This was a record that was included
13 within the database printout of information
14 about Mr. Cummings. And I don't know what date
15 that database was printed. The documents were
16 undated.

17 Q. For example, just so we are clear on
18 this, do you know whether there was a record in
19 Mr. Cummings' claim file, for example, that said
20 he smoked 33 years at one and a half packs a
21 day, quit in 1989, or, is this strictly from the
22 database that that information comes?

23 MR. KEMNA:

24 Objection to form.

25 A. That information, I did not find in

1 the -- I'm sorry. I phrased it wrong. Yes. I
2 believe that information was inside the claims
3 file materials and was also in the database.

4 MR. FORMAN:

5 Q. All right. Now, my question is this:
6 What is the date of the record in the claim file
7 that gave his smoking history?

8 A. I don't know the answer to that. I
9 would have to go back to the original resource
10 document

11 Q. All right. You said disease
12 diagnosed, pleural plaque and mild obstructed
13 airways, and then the ILO rating of 0/1.

14 Now, is that disease diagnosis based
15 on every bit of medical information that was
16 provided in the claim file and in the database,
17 or is this selected material?

18 A. The file contained a medical report.
19 The description of the disease was found in the
20 medical report.

21 Q. Was there just one medical report in
22 the file?

23 A. Right. This file had one report, one
24 medical report.

25 Q. And it had -- Who prepared the

1 report?

2 A. I could not remember that. I would
3 have to refer to the original source document to
4 determine those types of details.

5 Q. And I assume you don't recall the
6 date of the report? .

7 A. No, I don't.

8 Q. All right. What opinions do you
9 intend to express about the Jack Cummings case?

10 A. There was information in the file
11 contents that he worked in numerous plant jobs,
12 and there were comments that the air was dusty.
13 The description of his exposures in those plant
14 areas are imperfect in that we have no
15 understanding of the nature of the dust to which
16 he was exposed in the plant, and there was no
17 information included on the other risk agents
18 for lung diseases that may have been encountered
19 within his plant.

20 Q. So you are saying to the extent that
21 he had exposure to substances other than
22 asbestos, we don't know what they were or the
23 degree of that exposure?

24 MR. KEMNA:

25 Objection to form.

1 A. I'm saying there was inadequate
2 occupational history of his work exposures to
3 hazardous agents that can affect the lungs. And
4 aside from the determination of asbestos being
5 present, there was no indication that an attempt
6 was made to identify alternative exposure
7 sources.

8 MR. FORMAN:

9 Q. So are you expressing an opinion that
10 there was an insufficient basis to conclude that
11 this claim should be settled by Owens Corning?

12 A. Settled in relation to documentation
13 of asbestos exposure?

14 Q. Settled on any basis? I mean, I'm
15 trying to see where you are ultimately going
16 with this when you say there was not
17 documentation of other exposures. Are you
18 saying OC should not have settled the claim?

19 MR. KEMNA:

20 Objection to form.

21 A. I'm saying there was information in
22 the file which indicated a long period of
23 employment within a manufacturing facility that
24 handled asbestos-containing materials. And on
25 that basis, there was indication that the worker

1 did have asbestos exposure during his 37-year
2 documented employment time. And the presumption
3 of a claims settlement based on a long working
4 history within a manufacturing area handling
5 asbestos is not an unreasonable legal decision
6 to make.

7 Q. So you are not criticizing any
8 decision by Owens Corning in this case to
9 resolve or settle the claim, are you?

10 MR. KEMNA:

11 Objection to form.

12 A. I'm not objecting to the settlement
13 of the claim for Mr. Cummings. I believe the
14 information concerning his duration of asbestos
15 exposure would be indicative that he had a
16 probability of exposure, even though there was
17 no specific measurement of air concentrations
18 reporting in that file.

19 So in terms of an industrial hygiene
20 evaluation of him as a worker and whether he had
21 an exposure, I would concur that he more than
22 likely had an asbestos exposure that caused
23 detrimental effects on his health. That does
24 not negate the fact that there are other factors
25 that should have also been looked at.

1 Q. What specifically do you contend
2 Owens Corning should have done?

3 MR. KEMNA:

4 Objection to form.

5 A. I believe, within the evaluation of
6 occupational exposures, it is very customary
7 within our profession to do a thorough
8 examination of workplace activities including
9 all possible hazardous agents that may have
10 resulted in exposure associated with a
11 particular disease condition.

12 MR. FORMAN:

13 Q. Are you saying Owens Corning should
14 have required measurements of exposures in the
15 plant as a condition to settle the claim?

16 A. I'm saying there should have been
17 inquiry into those during the development of the
18 claim file.

19 Q. And are you saying Owens Corning did
20 not do that?

21 A. There was no information contained
22 within that file to reflect the presence of that
23 information. And I was informed this was the
24 totality of information available on these
25 individual claimants. So if the claims file

1 that exists does not have the information
2 included, I presume the information does not
3 exist.

4 Q. What was paid in settlement of the
5 claim?

6 A. I don't know. I was not evaluating
7 the monetary claims.

8 Q. Wouldn't that make a difference in
9 whether the settlement was reasonable?

10 MR. KEMNA:

11 Objection.

12 A. I'm not judging dollar values in
13 claims. I'm judging the exposure situation as
14 an industrial hygienist looks at exposures.

15 MR. FORMAN:

16 Q. So are you saying that OC should have
17 required a more detailed investigation of this
18 man's work history before they settled the
19 claim?

20 A. I think it would be reasonable in
21 every case to investigate alternate risk factors
22 prior to making a legal determination as to what
23 are the facts.

24 Q. Who was the plaintiff's attorney who
25 handled the claim?

1 A. I have no idea without going back to
2 the original files.

3 Q. What was the claim history of
4 settling claims with that plaintiffs' attorney?

5 A. That is some legal question. It is
6 not an industrial hygiene question. I did not
7 investigate that type of information.

8 Q. What were the history of settlements
9 of claims from that plant with other asbestos
10 companies?

11 A. I don't know the history of legal
12 settlements. I did not study the legal history;
13 I studied the technical contents of the files.

14 Q. Was his claim tried to verdict by any
15 asbestos company?

16 A. I don't know the legal history of
17 this claim. I studied the technical content of
18 the claims files, and that was the subject of my
19 investigation.

20 Q. Do you know whether any other
21 asbestos companies settled this claim and paid
22 this man money?

23 MR. KEMNA:

24 Objection.

25 A. I don't know the legal history of

1 this claim or this person. I studied the
2 content of the Owens Corning's claims files that
3 were provided to me.

4 MR. FORMAN:

5 Q. In making your decision about what
6 information you say Owens Corning should have
7 required, did you attempt to place yourself in
8 the position Owens Corning occupied at the time
9 it considered settlement of this claim?

10 MR. KEMNAP:

11 Objection to form.

12 A. I placed myself in the position of an
13 industrial hygienist trying to make an
14 evaluation on what kinds of exposures might have
15 occurred to a person employed within the work
16 situation described.

17 MR. FORMAN:

18 Q. Do you normally give your clients
19 opinions about whether they should settle a
20 claim or not?

21 A. No.

22 Q. Do you consider that the role of an
23 industrial hygienist?

24 A. No.

25 Q. Do you know how many claims were

1 pending against Owens Corning from this plant at
2 the time this case was settled?

3 MR. KEMNA:

4 Objection.

5 A. I have heard general numbers. I
6 don't know the number.

7 MR. FORMAN:

8 Q. What have you heard?

9 A. It was in the hundreds of thousands.

10 Q. From this plant?

11 A. I don't know. Sorry. I thought you
12 were talking about this case. I'm sorry.

13 Q. Do you have any information about the
14 claims that were made against Owens Corning by
15 persons who worked in this plant at the time
16 they settled this case?

17 A. No. I have no information like that.

18 Q. Do you know whether any other
19 manufacturer of asbestos products against whom
20 Mr. Cummings made a claim undertook the type of
21 investigation you claim should have been
22 undertaken by Owens Corning?

23 MR. KEMNA:

24 Objection.

25 A. No. I do not know.

1 MR. FORMAN:

2 Q. Do you know whether any cases of
3 workers who had been employed in that plant had
4 been tried to verdict?

5 A. No. I have no legal history
6 knowledge.

7 Q. Wouldn't all of these questions that
8 I'm asking you be relevant to a company in
9 deciding whether they ought to settle a claim?

10 MR. KEMNA:
11 objection.

12 A. That's a different subject of -- area
13 than the industrial hygiene area that I was
14 asked to investigate.

15 MR. FORMAN:

16 Q. You will agree that a decision to
17 settle a claim is not based simply on industrial
18 hygiene issues, is it?

19 MR. KEMNA:

20 Objection. I think the witness has
21 already stated pretty clearly what the area of
22 his expertise is and what he has not reviewed as
23 an aspect of offering expert opinions in this
24 case. These repeated questions on the legal
25 issues underlying Owens Corning's settlement of

1 claims are just overly repetitious and, now,
2 wasting time.

3 MR. FORMAN:

4 Q. Do you have any specific knowledge of
5 what the other exposures were at the plant?

6 A. No. The other exposures were not
7 documented within the case file.

8 Q. If information is presented to Owens
9 Corning that Mr. Cummings has an
10 asbestos-related condition, what difference does
11 it make with respect to what other exposures he
12 may have had when they approach settlement of
13 his claim?

14 A. Well, with the disease diagnosed and
15 the ILO rating, there were reasonable questions
16 from the medical side to find out whether we
17 really are dealing with an asbestos-related
18 disease here or not. Further medical
19 examination might have been needed in order to
20 fully concur that it was asbestos-related.

21 There are alternate exposure agents
22 that can cause those kinds of findings. And I
23 didn't see that information in the file either.

24 Q. Are you offering a medical opinion
25 that this man had pleural plaque that was caused

1 by something other than asbestos exposure?

2 MR. KEMNA:

3 Objection.

4 A. No. I am reporting the observation
5 in the database files that that was recorded.
6 And I'm not making a medical determination of
7 that. It is the presence of the information
8 that was in the file that is being remarked
9 here. It is not a diagnosis.

10 MR. FORMAN:

11 Q. Do you know whether at the time this
12 case might have come to trial that the ILO
13 reading might have changed from 0/1 to another
14 reading?

15 A. I suppose anything is possible.

16 Q. Do you know whether Mr. Cummings
17 might have seen other doctors had this case gone
18 to trial to substantiate a diagnosis?

19 A. That would have been interesting to
20 include within the case file if it was the case.

21 Q. Do you know whether information might
22 have developed after this case was settled had
23 it gone to trial that might have influenced what
24 his ultimate diagnosis was?

25 A. That is a speculative hypothetical

1 for a future action.

2 Q. You don't know that, do you?

3 A. No. No one knows the future.

4 Q. Have you ever been employed as a
5 claims adjustor?

6 A. No. I have not.

7 Q. Do you have any experience in
8 settling asbestos claims?

9 A. No. I have not.

10 Q. Have you ever recommended settling
11 asbestos claims to anyone?

12 A. No. I have not.

13 Q. Have you ever recommended setting up
14 a specific set of criteria to settle asbestos
15 claims to anyone?

16 A. I'm not in the insurance business as
17 a claims adjustor or anyone like that. I'm an
18 industrial hygienist and a chemist, and my
19 assignment was to evaluate the quality of the
20 data that was contained in the files and to
21 compare it from the basis of an industrial
22 hygiene exposure situation.

23 Q. Now, when you summarized the
24 information, did you attempt to include all of
25 the medical information from any source that you

1 saw in either the database or in the claim file?

2 A. Well, if you will look down the list
3 of file contents, that column would refer to
4 things such as medical records. That would be
5 an indication to me that there were multiple
6 records within that file that were of a medical
7 report and documentation nature.

8 So I did not try at all to record all
9 of the information that was in those. I made
10 very shorthand notations such as that to
11 indicate that the file contained multiple
12 records. To review any individual file would
13 refer to going back to the exact source
14 documents for each and every file.

15 Q. Well, to be clear about that, when
16 you record an ILO rating of 0/1, are you saying
17 that there was no other ILO rating in the file?

18 A. Are we referring to Mr. Cummings?

19 Q. Yes.

20 A. Yes. That one had a medical report.

21 Q. Now, when you say that had a medical
22 report, do you mean a report that included an
23 ILO reading of 0/1 or some other information in
24 addition to that?

25 A. Well, the medical report would

1 contain multiple pieces of information.

2 Q. Do you know whether any medical
3 report referred to interstitial fibrosis?

4 A. For Mr. Cummings, I don't believe
5 that was in the report. The interstitial
6 fibrosis would have been added into "Disease
7 Diagnosed" column had it been in the medical
8 report, but it would have been appearing in a
9 normal font rather than an italicized font
10 because the italicized information reflects what
11 was included within the database entries.

12 MR. FORMAN:

13 All right. I think at this point,
14 I'm going to have to take a break for a while
15 and see if I can get some information sent up
16 from my office about these claim files. And I
17 would suggest that we try to reconvene at, say,
18 1:00, if that would be agreeable.

19 MR. KEMNA:

20 If that is what you think you need to
21 do to proceed. I'd like to get finished today.

22 (A recess was taken.)

23 MR. KEMNA:

24 Let me go back on the record for just
25 a moment. I'd like to have marked as the next

1 exhibit a letter dated February 22nd, 2001, from
2 Bruce Tepikian of the offices of Shook, Hardy &
3 Bacon to Richard Forman. This is regarding the
4 deposition of Dr. Jurinski. This is the letter
5 that was sent back to Mr. Forman in response to
6 the letter that was entered in as an exhibit
7 previously at the deposition.

8 (Exhibit 8 was marked.)

9 MR. KEMNA:

10 And this letter specifies that
11 Dr. Jurinski will offer opinions within his area
12 of expertise regarding the specific Owens
13 Corning claims files he has reviewed, in
14 parenthesis, see Dr. Jurinski's reliance
15 materials, close paren.

16 We're off the record.

17 MR. FORMAN: We will be back at 1:00.

18 (A recess was taken.)

19 MR. FORMAN:

20 Q. Dr. Jurinski, are you going to offer
21 any opinion that any amount of money that OC
22 paid to settle any of these claims was not
23 reasonable?

24 MR. KEMNA:

25 Objection.

1 A. I am not going to comment on monetary
2 aspects of the case. As I said in a prior
3 question and answer, I have not reviewed the
4 monetary systems that were included within that
5 database. I have, instead, reviewed the
6 information that was present in the files to
7 look for occupational exposures or other
8 exposures that might have an impact on lung
9 diseases.

10 MR. FORMAN:

11 Q. Do you agree that a company would
12 take into account factors other than industrial
13 hygiene issues in determining whether to settle
14 a case?

15 MR. KEMNA:

16 Objection.

17 A. I agree that companies have many
18 issues that they must consider in making any
19 type of decisions that they are faced with
20 making.

21 MR. FORMAN:

22 Q. Are you able to offer any opinion in
23 this case within reasonable probability that any
24 industrial hygiene data that could have been
25 derived with respect to any of these claimants

1 reflected on Exhibits 3 and 4 would have made a
2 difference in any decision to settle the claim?

3 MR. KEMNA:

4 Objection.

5 A. I am not privy to the relative
6 weighting of factors that the corporation may
7 have decided to use, and that was not part of my
8 investigation or my task request. I was
9 requested to look at the exposure scenarios as
10 reflected within the files, and any other kinds
11 of factors that have to do with corporate
12 decision makings were outside of the scope of my
13 investigation.

14 MR. FORMAN:

15 Q. Are you able to offer any opinion
16 within reasonable probability that any other
17 data that could have been derived with respect
18 to any industrial hygiene issue would have been
19 medically significant in any of these 18 cases
20 reflected in Exhibits 3 and 4?

21 MR. KEMNA:

22 Objection to form.

23 A. There are indications of alternative
24 exposures, and there are other files for which
25 documentation of alternative exposures is

1 completely missing that would lead one to
2 believe alternate risk factors could have been
3 significant in several of these cases had the
4 data been accumulated and evaluated.

5 MR. FORMAN:

6 Q. Do you know whether any specific
7 industrial hygiene measurements were made on any
8 of the work sites where any of the claimants
9 worked, any of these claimants reflected in
10 Exhibits 3 and 4?

11 MR. KEMNAY:

12 Objection to form.

13 A. There was, I believe, one file in
14 this collection in which there was some report
15 of industrial hygiene monitoring of air
16 concentrations for asbestos. There was no
17 documentation of air concentrations having been
18 collected or reported for alternate exposure
19 agents.

20 MR. FORMAN:

21 Q. What case was that?

22 A. I will refer to the sheets, if I may.
23 Joe Butler, Jr.

24 Q. And what were the exposure
25 measurements that were available?

1 A. There was included within that file a
2 summary table of the air file -- air fiber
3 samples. There was included in there an NTIS
4 sampling report.

5 Q. What date?

6 A. I would have to go back to the
7 original file materials to provide you the date
8 detail information. I have recorded here in my
9 file just the presence of those. I have not
10 transcribed the information from each of those
11 items.

12 Q. So do you know what the measurements
13 were then, today that were recorded?

14 A. No, I don't.

15 Q. Do you know what time period they
16 would have covered?

17 A. Not without referring to the actual
18 file material themselves, the primary source.

19 Q. Do you know whether they would have
20 been representative of the exposure he had on a
21 daily basis?

22 A. Any air sample is representative of
23 the exposure at a given time that the sample is
24 collected. To the fact whether it is
25 representative of each day's exposure is always

1 a subject to question. But I would believe that
2 the data as presented was meant to be
3 representative of his exposures.

4 Q. Do you know whether it was, in fact,
5 a measurement of exposure taken in the area
6 where Joe Butler worked?

7 A. Without referencing the specific
8 documentation, I cannot tell you yes or no.

9 Q. So you have no idea whether that
10 measurement was relevant to any exposure he
11 actually experienced, do you?

12 A. This information as provided was
13 purported to be representative of his workplace.

14 Q. In the file, it said that?

15 A. Those were file summary tables of air
16 sampling concentrations that had been provided
17 in reference to Mr. Butler's work assignments.
18 I'm taking them at face value.

19 Q. And at what workplace were they?

20 A. In the location, I don't have
21 recorded here which of the particular locations.
22 My recollection, and this is not based on
23 absolute memory, but I believe it was within the
24 CertainTeed Products Company location that is
25 reported under the column for his employer.

1 Q. Do you know whether there was any
2 industrial hygiene information available for any
3 of the cases which Owens Corning, in fact, did
4 not take account of in settling these claims?

5 A. I have no knowledge of that.

6 Q. In any of these 18 claim files that
7 are reflected on Exhibits 3 and 4, do you recall
8 seeing any medical report in which a doctor said
9 the claimant did not have an asbestos-related
10 condition, but, instead, had a condition related
11 to other exposure at the workplace?

12 MR. KEMNA:

13 I'm going to object to form.

14 A. I don't recall the statement
15 including the second component of your question.
16 The first component of your question, I would
17 answer yes in that in one file a doctor had
18 reported no disease to be observed.

19 MR. FORMAN:

20 Q. Do you recall what file that was?

21 A. Johnny Alford.

22 Q. And would it be fair to state that,
23 with respect to Mr. Alford, that you also found
24 information that he did have asbestosis, or, at
25 least, that was reflected in the information

1 that you reviewed?

2 A. There was an indication in the file
3 of two states; one said no disease, another said
4 asbestosis.

5 MR. KEMNA:

6 Let me see if we can clarify. Are
7 you referring to information that was obtained
8 from the explicit claims file or from the
9 database printout?

10 MR. FORMAN:

11 Either one.

12 MR. KEMNA:

13 Okay. Dr. Jurinski, I will ask you
14 to take care to respond directly to questions,
15 either relating it to the claims file itself or,
16 otherwise, the database specifically.

17 MR. FORMAN:

18 Q. Going back to make sure we are on the
19 same page, then, with regard to that, would it
20 be fair to state that you were not aware of any
21 information in either the database or in the
22 claim file in which a doctor said that any of
23 these claimants reflected on Exhibits 3 or 4 did
24 not have any asbestos-related condition, but,
25 instead, had a condition caused by exposure to

1 other substances at the workplace?

2 A. There was attribution to multiple
3 exposures, including asbestos, in Minatrea's
4 file, Mr. Walter Minatrea, in which the medical
5 records indicating the examination of lung
6 tissue showed the presence of asbestos fibers in
7 the lung tissue, as well as silica and metal
8 oxides, especially iron.

9 In the report of this person's work
10 history, it was mentioned in the case files that
11 the person worked as a welder and, also, for
12 many years as a sandblaster. And so there are
13 very good indications that this person had
14 multiple risks to lung health, and the
15 attribution of all of the disease to asbestos
16 exposure is not sustained by the evidence shown
17 in the x-ray analysis that shows a multiple
18 exposure situation.

19 Q. Did your records indicate that
20 Mr. Minatrea worked as an insulator's helper?

21 A. The case file records indicated he
22 worked as an insulator's helper. The database
23 file indicated he was in refinery/oil.

24 Q. Would you expect someone who worked
25 as an insulator's helper to have substantial

1 exposure to asbestos?

2 A. I would expect he would have
3 exposure, but without more documentation in the
4 file record as to the extent, it would be hard
5 to put any sort of qualification as to low,
6 medium or high exposures without knowing exactly
7 what kinds of work he was doing as an
8 insulator's helper. The insulators installing
9 the material are, obviously, at the closest
10 point to the active work.

11 Q. Did any doctor in this case, to your
12 knowledge, make a diagnosis of a disease
13 attributable to exposure other than asbestos?

14 A. The doctors made a determination of
15 lung cancer.

16 Q. Do you have an opinion as to whether
17 asbestos is a recognized cause of lung cancer?

18 A. Yes. It is my opinion that it is a
19 cause of lung cancer.

20 Q. Do you believe that asbestosis must
21 be present to attribute an asbestos exposure to
22 lung cancer?

23 A. No. Lung cancer from asbestos
24 exposure may occur in the absence of asbestosis
25 evidence.

1 Q. Do you have an opinion as to whether
2 silica exposure is a cause of lung cancer?

3 A. Yes. I believe silica exposure can
4 be a cause of lung cancer.

5 Q. Do you believe that silica exposure
6 in the absence of silicosis is a recognized
7 cause of lung cancer?

8 A. I have no opinion on that. I have
9 not seen enough data to make a determination on
10 that.

11 Q. Do you know whether any diagnosis of
12 silicosis was made in this case?

13 A. The diagnosis of silicosis was not in
14 that file.

15 Q. With respect to any welding exposure
16 that he had, do you have any opinion as to
17 whether exposure to welding fumes is a
18 recognized cause of lung cancer?

19 A. Yes, it is.

20 Q. And do you recall, or do you have an
21 opinion, as to what kind of welding fumes have
22 been identified as causing lung cancer?

23 A. Welding fumes containing metals such
24 as chromium are a primary candidate of that.
25 Antimony is another component that can be

1 associated with lung cancer. Nickel is another
2 component that can be associated with lung
3 cancer. Any of the metals welded upon that
4 would contain those materials would have the
5 potential for inducing a lung cancer
6 observation.

7 Q. Do you know whether any doctor in
8 this case attributed his lung cancer in part to
9 welding exposure?

10 A. That was not included in the record,
11 no.

12 Q. Do you know whether he had enough
13 exposure to welding fumes to make the
14 attribution of lung cancer to welding?

15 A. No. And that is really the concern
16 that I have, that the information about those
17 alternate exposures was never apparently sought
18 when this file material was developed.

19 Q. Do you know whether, if he had
20 asbestosis or an asbestos-related condition or
21 even asbestos exposure and smoking, whether
22 those were material contributing causes to the
23 lung cancer?

24 A. The question, the last component,
25 asking about smoking was commented upon by the

1 database file recording a 33-year history of
2 smoking with a quit date recorded of 1989. That
3 would represent a significant amount of smoking
4 exposure.

5 The other aspects of your question
6 that you asked, I'm afraid, I forgot in the
7 point of listening to the end of your question.

8 Q. All right. Let me go back --

9 MR. KEMNA:

10 Can I interject something? Which
11 claimant are we talking about?

12 MR. FORMAN:

13 Minatrea.

14 MR. KEMNA:

15 Okay. Dr. Jurinski, your last
16 response, was that intended to be directed to
17 Minatrea or Cummings?

18 THE WITNESS:

19 To Minatrea.

20 MR. KEMNA:

21 Okay. So this is what you are
22 looking at. I just wanted to -- for
23 clarification purposes --

24 THE WITNESS:

25 Excuse me, yes. Let me go back to

1 the comment on smoking. I had used 33 years of
2 smoking for Mr. Minatrea and, instead, the -- I
3 read the wrong line on this sheet. The answer
4 should have referenced 38 pack years of smoking
5 history for Mr. Minatrea.

6 MR. FORMAN:

7 Q. Are you going to offer any opinion in
8 any of these cases with respect to the
9 contribution of smoking to any of the diseases
10 that any of them have?

11 A. I'm commenting that smoking is a risk
12 factor the way I'm commenting that all of these
13 factors are risk factors for diseases of the
14 lung.

15 Q. Let me put it this way, then: Do you
16 feel that you have the expertise and
17 qualifications to offer an opinion as to
18 whether, in the case of Mr. Minatrea, smoking
19 was a contributing cause of his lung cancer?

20 MR. KEMNA:

21 Objection.

22 A. I'm not trying to provide causation
23 of an individual disease. I'm trying to
24 evaluate exposures that individuals had. And
25 from the industrial hygiene perspective, that's

1 what you do. You evaluate what kinds of
2 exposures to what kind of hazardous agents have
3 occurred. And that provides a basis for the
4 full investigation to continue. If you don't
5 fully examine all of the exposures, you don't
6 know the full extent of the data.

7 MR. FORMAN:

8 Q. Do you intend to offer an opinion
9 that smoking was, in fact, a contributing cause
10 of his lung cancer?

11 MR. KEMNA:

12 Objection.

13 A. No. I am not going to make a
14 judgment on causation of a disease in an
15 individual. That kind of action should be done
16 by a licensed physician.

17 MR. FORMAN:

18 Q. Are you going to offer an opinion as
19 to the relative importance of smoking or
20 exposure to cigarette smoke versus exposure to
21 asbestos in the case of Mr. Minatrea or in any
22 other of these cases reflected on Exhibits 3 or
23 4?

24 A. I'm not going to evaluate risk
25 factors or identify one agent above another as a

1 causative agent for an individual's disease.
2 That information will be left for a licensed
3 physician to comment on. I am not a physician.
4 I am an industrial hygienist.

5 Q. Outside of the case of Mr. Minatrea,
6 do you recall any other case in which you
7 contend that the records you reviewed indicated
8 a doctor said there were exposures other than
9 asbestos that had medical significance to the
10 diagnosis made in the case?

11 A. I don't believe there was another one
12 in the set of files that I reviewed that would
13 fit that qualification.

14 Q. In the case of Mr. Minatrea, do you
15 know whether the amount paid in settlement by
16 Owens Corning took into account the various
17 exposures that you have described in arriving at
18 the settlement that was ultimately agreed to?

19 MR. KEMNA:

20 Objection.

21 A. In answer to your question, that is
22 specifically focused on this individual, I will
23 reiterate what we said earlier to the same
24 question in general. I have not engaged in any
25 financial analysis of payments in any of these

1 cases.

2 MR. FORMAN:

3 Q. And it would be fair to state, then,
4 that you did not take into account any external
5 factors, that is, exterior to industrial hygiene
6 data, that were considered by Owens Corning in
7 making a decision as to whether it should settle
8 a claim and, if so, what amount it should pay?

9 A. That was outside my scope of
10 activity.

11 Q. Are you qualified to offer an opinion
12 as to whether asbestos exposure and cigarette
13 smoking can act in combination to increase the
14 risk of a diagnosis of asbestosis?

15 A. I consider each of those to be risk
16 agents for the development of the disease.

17 Q. Do you know how they interact to do
18 that, or do you have expertise in that area?

19 A. I am not a researcher that studies
20 that. I have read reports that are included
21 within the technical literature, but that is not
22 my field of expertise.

23 MR. KEMNA:

24 Let me just clarify. That last
25 question was directed to the disease asbestosis

1 versus lung cancer?

2 MR. FORMAN:

3 I think the question was clear.

4 Q. Have you had occasion in the past to
5 evaluate the contribution of smoking to the
6 cause of disease in a context other than these
7 18 cases?

8 THE WITNESS:

9 Could you read that question back?

10 (Whereupon, the question referred
11 to was read.)

12 A. I'm not sure I understand your
13 question, even the second time.

14 MR. FORMAN:

15 Q. Has there been a case, putting aside
16 this case you are involved in today and these 18
17 claim files that you looked at, has there been
18 another occasion when you have been involved in
19 a case involving litigation in which you have
20 made an evaluation of the contribution of
21 smoking to the disease that was at issue in the
22 case?

23 MR. KEMNA:

24 Objection to form.

25 A. No. I don't believe I've had such a

1 case.

2 MR. FORMAN:

3 Q. Do you have any information that any
4 company against whom any of these claimants
5 reflected on Exhibits 3 and 4 made a claim
6 conducted any investigation to obtain any
7 additional information which you say OC should
8 have investigated? In other words, did any
9 other company do anything different than what
10 Owens Corning did, to your knowledge, in
11 investigating these claims?

12 MR. KEMNA:

13 Object to the form.

14 A. I really have no knowledge on which
15 to base an answer.

16 MR. FORMAN:

17 Q. Do you contend that Owens Corning
18 should have gone to the workplace of each of
19 these claimants and demanded industrial hygiene
20 data from the employer as a condition to
21 settling the claims?

22 A. I don't believe I could make a demand
23 as to what mechanism of elicitation of exposures
24 should or could have been done. Within legal
25 proceedings, it is quite common to take

1 depositions. That is one alternative route.

2 Q. Have you studied depositions of any
3 co-workers of any of these 18 claimants to know
4 what information they may have had or may have
5 provided with respect to the exposure of any of
6 these 18 claimants?

7 A. Within Mr. Joe Butler's file, there
8 were deposition transcripts included that went
9 into some significant information about his
10 particular workplace. It was quite rare to find
11 that kind of detail included within the other
12 case files. It appeared as if there was an
13 absence of such documentation throughout these
14 files. And so, while there were occasions in
15 which effort had been made to investigate the
16 work site conditions, within the majority of
17 these files such investigations were completely
18 absent as far as the file content demonstrated.

19 Q. What did the information in Mr. Joe
20 Butler's claim indicate? You said there were
21 depositions?

22 A. Yes. Comments included within the
23 deposition were illustrated in the right-most
24 column on the summary. And it indicated he
25 worked around ACM from other trades and used

1 other ACM-type products, and he worked in an ACM
2 plant making such products. So there was some
3 inclusion here of workplace-specific
4 information.

5 Q. When you say ACM, do you mean by
6 that -- Is that a shorthand description for
7 asbestos-containing material?

8 A. I'm sorry. Yes. That's an acronym I
9 use when I'm taking notes because it is commonly
10 used in my profession.

11 Q. Do you know whether Owens Corning,
12 then, may have had access to information
13 concerning the exposure of these 18 claimants
14 from sources, for example, which would have
15 consisted of depositions of co-workers who may
16 have worked with these 18 people?

17 A. It was my understanding that the file
18 information I was provided represented the
19 complete information that Owens Corning had.
20 Whether they had other opportunities is
21 something I have no way of knowing.

22 Q. You don't know, for example -- let's
23 just take the case of Mr. Joe Butler -- whether
24 the person that settled that claim said, I
25 settled the case of John Jones last week who

1 worked in that plant, and I have got a pretty
2 good idea of the information about what kind of
3 exposure was there at the plant, and I have
4 enough to, in my mind, make the evaluation of
5 what I need to pay on the claim?

6 MR. KEMNA:

Objection to form.

7 A. I'm not sure if I heard a question.

8 MR. FORMAN:

9 Q. Do you know whether that could have
10 occurred or not?

11 MR. KEMNA:

12 Objection to form.

13 A. As a hypothetical, I guess it could
14 have occurred, hypothetically.

15 MR. FORMAN:

16 Q. Have you requested any data from any
17 employers of any of these 18 persons with
18 respect to any exposure information available at
19 any of their work sites?

20 A. No. My task was to review the file
21 information provided to me and comment upon the
22 adequacy and accuracy of the information within
23 those files to warrant the determinations that
24 these diseases were caused by asbestos exposure
25

1 or by some other alternate risk agent.

2 Q. If a doctor in a case has made a
3 diagnosis of an asbestos-related condition, you
4 are not in a position to second guess that
5 diagnosis, are you?

6 A. No. I do not change diagnoses that
7 are made by physicians.

8 Q. And so, if a doctor has made a
9 diagnosis of an asbestos-related condition,
10 wouldn't that necessarily inherently include a
11 finding that the person was exposed to asbestos
12 on the job?

13 MR. KEMNA:

14 • Objection.

15 A. The diagnosis, per se, would speak
16 for itself. Many diagnoses are subject to
17 second opinions.

18 MR. FORMAN:

19 Q. But you are not in a position to give
20 that second opinion?

21 A. I am not that person, no, so I cannot
22 comment that just because a doctor makes a
23 diagnosis, that it cannot be challenged. It is
24 not going to be challenged by me.

25 Q. Even if a diagnosis by a physician

1 were challenged, does that mean the claim should
2 not be settled, in your opinion?

3 A. Settlement of claims is different
4 from having a disease or having an exposure.
5 Those are separate subjects.

6 Q. I assume you are familiar with the
7 literature on exposure of asbestos workers?

8 A. Yes. That's a very general question.

9 Q. But, in general, you are familiar
10 with asbestos literature --

11 A. Yes.

12 Q. -- that talks about exposure of
13 asbestos --

14 A. Yes.

15 Q. -- to workers who are occupationally
16 exposed to asbestos?

17 A. Yes.

18 Q. Can you identify for me today any
19 study which has purported to include a
20 description of each and every other exposure
21 that a worker has experienced who is included in
22 any cohort covered by the study?

23 MR. KEMNA:

24 Objection to form.

25 A. When you bring in the word "cohort,"

1 you're speaking epidemiology and not industrial
2 hygiene. I think your question is going in two
3 directions. Are you asking about industrial
4 hygiene studies?

5 MR. FORMAN:

6 Q. I'm asking you of any study you have
7 ever read in the asbestos literature which talks
8 about a group of workers exposed to asbestos
9 which has purported to identify and measure
10 every other exposure to any other substance than
11 asbestos which the workers were exposed.

12 MR. KEMNA:

13 Objection to form.

14 A. No. I cannot think of an industrial
15 hygiene study that was evaluating asbestos
16 exposures of a selected job group that reported
17 that.

18 MR. FORMAN:

19 Q. Whom do you consider reliable
20 authorities in the field of reporting on
21 asbestos exposure?

22 A. I believe the people who evaluate
23 exposures are most likely the group of reliable
24 persons to do that. Typically, that would fall
25 within the profession of industrial hygiene.

1 Q. And what industrial hygienists who
2 have written on the subject of asbestos exposure
3 do you consider authoritative?

4 A. A single individual?

5 Q. Single or more. Anybody.

6 A. I would say the authoritative ones
7 are those included within the list of certified
8 industrial hygienists as published by the
9 American Board of Industrial Hygiene.

10 Q. And who? Who are some of those
11 people that have published on asbestos?

12 A. That have published on them or are
13 considered to me to be credible?

14 Q. Both.

15 A. Both?

16 Q. In other words, credible and have
17 published on it.

18 MR. KEMNA:

19 Objection to form.

20 A. I cannot think off the top of my head
21 today that I can name a particular individual or
22 more to you.

23 MR. FORMAN:

24 Q. Going back to the case of Mr. Jack
25 Cummings for a moment, do you have an opinion

1 that he had a condition, caused by exposure to
2 substance at the workplace, other than
3 asbestosis or any asbestos disease?

4 A. In regard to Mr. Cummings, the
5 information included within the file identified
6 an employer named Raymark that was a
7 manufacturer of asbestos products. The
8 information contained in the database indicated
9 his disease as pleural plaques and mild
10 obstructive airways. As I had mentioned
11 earlier, there are multiple causes that could
12 produce those kinds of disease.

13 And the workplace details in the file
14 indicated just the limited information of dusty
15 air and he worked in numerous plant jobs. The
16 information describing those jobs was lacking,
17 and I could not identify from the file contents
18 whether, within those other jobs, there were
19 alternate risk exposures aside, or in addition
20 to, asbestos exposure that he apparently had
21 from his plant work assignments in the
22 manufacturing operation.

23 Q. Do you offer any opinion that the
24 diagnosis of pleural plaque was due to anything
25 other than asbestos exposure?

1 A. I do not make diagnoses of disease,
2 and I have just commented the pleural plaque has
3 possibilities of alternate sources, alternate
4 risks, that may produce that medical
5 observation. The determination of the agent
6 would be left to a licensed physician to make
7 the determination.

8 Q. In any of these cases, are you aware
9 of any diagnosis by any doctor that any finding
10 of pleural plaque was due to anything other than
11 asbestos?

12 A. No. I found the file contents to be
13 mostly devoid of exploration of alternate source
14 and attribution. And I don't think a thorough
15 investigation was done of alternate source
16 possibilities.

17 Q. Do you have an opinion, given your
18 background and experience in this area, that
19 when a person claims to have been employed in an
20 asbestos plant for 37 years and has a diagnosis
21 of pleural plaque, as to the odds of that
22 pleural plaque being due to something other than
23 asbestos exposure?

24 MR. KEMNA:

25 Objection to form.

1 A. I would believe the odds for it being
2 attributable to asbestos exposure would be
3 fairly high. That does not exclude the need to
4 investigate.

5 MR. FORMAN:

6 Q. So is it your opinion that if Owens
7 Corning is given a report by a medical doctor
8 who said that Jack Cummings has pleural plaque,
9 that, in my opinion -- my, the doctor opinion --
10 is due to asbestos exposure, they should not
11 accept that, but, rather, should conduct an
12 investigation beyond the doctor's report to try
13 to challenge it?

14 MR. REMNA:

15 Objection to form.

16 A. I believe that every case file should
17 be investigated, yes.

18 MR. FORMAN:

19 Q. And if they find a doctor who says, I
20 don't think Jack Cummings had pleural plaque, or
21 I think the pleural plaque is due to something
22 else, what should they do then?

23 A. If there is question about whether or
24 not the disease is attributable to asbestos,
25 then I think it should be investigated further.

1 Q. It is investigated and you have a
2 conflict of opinion; what then?

3 A. That's why we have legal recourse.
4 Those kinds of questions are left to the courts
5 to decide.

6 Q. So you think they should take those
7 cases to trial every time?

8 MR. KEMNA:

9 Objection.

10 A. There are societal ways of doing
11 things that we have structured within our
12 country. And I happen to be investigating
13 exposures of materials. Other people do all
14 sorts of other things. And when there is a
15 dispute that can't be resolved in our country,
16 we go to court.

17 MR. FORMAN:

18 Q. But when it is resolved?

19 A. Then, we don't go to court.

20 Q. And are you able to offer any opinion
21 that the decision to resolve was inappropriate?

22 MR. KEMNA:

23 Objection.

24 A. I am not commenting on the quality of
25 the decision made to come to a decision to

1 settle. I am evaluating case files for their
2 contents to describe the exposures and the
3 documents that back up those exposures as
4 contained within the prime factual material in
5 the file.

6 MR. FORMAN:

7 Q. I assume you have not talked to any
8 of the doctors who rendered any medical reports
9 referenced in any of these claim files?

10 A. You are correct.

11 Q. And so, you have no idea what
12 information they determined to be significant,
13 whether they took an exposure history, for
14 example, from a claimant?

15 A. As we said, I did not talk to any of
16 them.

17 Q. You have no information about any
18 specific alternative diseases they considered
19 and rejected in reaching a diagnosis, do you?

20 A. As we said, I have not talked to any
21 of them.

22 Q. Do you know how many of the 18
23 claimants reflected in Exhibits 3 or 4 were
24 deposed?

25 A. No. I have no information on that.

1 Q. Do you agree that smoking is the
2 largest preventable cause of death in the U.S.?

3 A. I know there are many preventable
4 causes of death. Every one will die, so
5 sometimes you are going to have a case where you
6 can adjust the risks from one cause of death to
7 another one.

8 Q. Do you agree that smoking is the
9 largest preventable cause of death in the U.S.?

10 A. I could not say that, for example, in
11 comparison with driving a car. I don't know how
12 to rank those numbers.

13 Q. Do you agree that smoking causes over
14 400,000 premature deaths each year in the U.S.?

15 A. I don't know the number. I know that
16 there is an attribution of a large number of
17 deaths to smoking.

18 Q. Do you know of anything that
19 approaches that number from other causes?

20 MR. KEMNA:

21 Objection.

22 A. I know some serious causes of death
23 among our population include voluntary
24 activities that people engage in, yes.

25 MR. FORMAN:

1 Q. Are you familiar with any literature,
2 Dr. Jurinski, upon which you would rely or
3 consider authoritative and reliable which would
4 suggest there is any cause of preventable death
5 in the U.S. greater than cigarette smoking?

6 A. I don't have those kinds of numbers
7 in my head. I don't do that kind of work for my
8 profession. I only encounter those numbers in
9 general reading.

10 Q. Do you contend there is any greater
11 risk factor for lung cancer than smoking?

12 A. I don't believe I have information to
13 be able to make that statement.

14 Q. Do you have any information about the
15 proportion of asbestos workers who are purported
16 to be smokers?

17 A. I know it is a large majority
18 percentage. I don't think I could quote you a
19 number. There have been studies of it, and I
20 don't recall that specific number.

21 Q. Who do you recall has published
22 information about that?

23 A. I believe in some of the early work
24 of Selikoff and his group, there were comments
25 on percentages. There was some later

1 information, and I'm not remembering the author
2 of that. I can't quote those numbers off the
3 top of my head.

4 Q. Do you recall Dr. Selikoff reporting
5 greater than 80 percent of asbestos workers he
6 examined were smokers?

7 A. I don't recall the number. I
8 remember it was a majority.

9 Q. Have you investigated the smoking
10 habits of blue collar workers?

11 A. Have I investigated them?

12 Q. Yes.

13 A. No. I have not.

14 Q. Have you read any literature about
15 it?

16 A. I have read literature about it. I
17 have observed it just in the passing through
18 plants over the years as I've worked.

19 Q. What information have you determined
20 about that as to percentages?

21 A. I have observed it. I have not
22 calculated percentages.

23 Q. Have you reviewed the Surgeon General
24 Reports on the percentage of blue collar workers
25 that are smokers?

1 A. I have read excerpts from the
2 smoking -- from the Surgeon General's Reports on
3 smoking. I don't specifically remember if in
4 those I read that specific component of the
5 data.

6 Q. Do you intend to offer any opinion in
7 this case comparing the risk of cancer from
8 asbestos exposure to the risk of cancer from
9 smoking?

10 A. No. My task in this work is to
11 assess the exposures of persons in these various
12 case files to determine whether or not there was
13 a full consideration of alternate risk exposures
14 that could have also contributed to lung
15 disease.

16 Q. Do you claim to have expertise in
17 predicting the occurrence, or the risk of
18 occurrence, of disease from cigarette smoking?

19 A. No.

20 Q. Do you claim to have any expertise
21 with regard to the risk of disease from smoking
22 filtered cigarettes versus non-filtered
23 cigarettes?

24 A. No. My technical field of
25 professional work is not in doing risk analyses;

1 it is in doing industrial hygiene exposure
2 evaluations.

3 Q. Have you prepared any written list of
4 objections or shortcomings, maybe, for lack of a
5 better word, that you say Owens Corning -- Let
6 me start over. Have you prepared any list of
7 actions that Owens Corning should have taken in
8 any of these specific cases that you have
9 knowledge that they did not, in fact, take?

10 A. No. I have prepared no list. I'm
11 waiting to answer your questions.

12 Q. Do you know whether diseases other
13 than asbestos were diagnosed from exposures at
14 the work site of any of these 18 claimants --

15 MR. KEMNA:

16 Objection to form.

17 MR. FORMAN:

18 Q. -- that were due to exposures at the
19 work site? And I don't mean for these 18
20 claimants. I mean other workers. And let me
21 try and explain.

22 A. Go back and restate your question,
23 please.

24 Q. Let's say, for example, to put this
25 in context, that you know where Jack Cummings

1 worked, and you have reason to think that maybe
2 they should have done more investigation about
3 Jack Cummings' exposure because it turns out
4 2,000 workers at that plant developed
5 condition "X" from exposure to substance "Y."
6 And what I want to know is, do you have any
7 information about the work sites or the
8 conditions of exposure at the work sites of any
9 of these people that would suggest to you there
10 was, in fact, exposure going on that led to
11 diagnoses of other diseases?

12 A. Could you define "other diseases"?

13 MR. KEMNA:

14 Objection to form.

15 MR. FORMAN: ,

16 Q. Anything other than asbestosis that
17 is work related.

18 MR. KEMNA:

19 Objection to form.

20 MR. FORMAN:

21 Q. Let me put it this way -- Go ahead.

22 A. Yeah. I'm just having trouble
23 tracking through your question. It was quite
24 long.

25 Q. All right. Here is a man that

1 worked, for example, just take Jack Cummings, as
2 a plant worker in an asbestos manufacturing
3 plant, apparently. Is there anything, to your
4 knowledge, that you are aware of that would
5 suggest, at this workplace, there were
6 work-related lung conditions diagnosed that were
7 not due to asbestos exposure?

8 A. No. I have no information that would
9 lead to that type of conclusion.

10 Q. All right. Would that be true for
11 all 18 of these people, just to save time,
12 reflected on Exhibits 3 and 4?

13 MR. KEMNA:

14 • objection to form.

15 A. I guess I'm back to Mr. Minatrea and
16 his sandblasting history of 10 years with use of
17 personal protection for his respiratory system
18 that initially did not include fresh air supply
19 protection. And the absence of a diagnosis of
20 asbestosis in the file would lead me to believe
21 that there is a probability that silica exposure
22 was one significant risk factor for this
23 individual.

24 Others who worked in his same type of
25 assignments would be similarly considered at

1 risk if their job assignments were similar.

2 MR. FORMAN:

3 Q. Do you know if any other people who
4 worked at the same work site as Mr. Minatrea
5 were diagnosed with silicosis?

6 A. No. I don't know that.

7 Q. Now, you said in the case of
8 Mr. Minatrea that the tissue analysis showed the
9 presence of asbestos. Do you recall that?

10 A. Correct.

11 Q. And do you recall that it showed the
12 presence of amosite asbestos?

13 A. Correct.

14 Q. Do you have an opinion as to the
15 carcinogenic properties of amosite asbestos?

16 A. Amosite asbestos can cause lung
17 cancer and asbestosis. Silica and metal oxides
18 from welding fumes will not cause asbestosis,
19 but can cause lung cancer.

20 MR. KEMNA:

21 Excuse me. Can we take just a couple
22 of minutes break? We have been going for about
23 an hour.

24 (A recess was taken.)

25 MR. FORMAN:

1 Q. Dr. Jurinski, are you able to
2 estimate the cost of any additional
3 investigation which you recommend Owens Corning
4 should have undertaken in any case --

5 A. No.

6 Q. -- on Exhibits 3 and 4?

7 A. I am not able to estimate costs.

8 Q. Then would it be fair to state that
9 you don't know whether the cost of carrying out
10 any additional investigation with respect to
11 other exposures would or would not have exceeded
12 the amount paid in settlement?

13 MR. KEMNA:

14 Objection to form.

15 A. As I answered the last question, I
16 don't know how to evaluate those costs.

17 MR. FORMAN:

18 Q. What opinions do you intend to offer
19 in the case of Mr. Joseph Sheridan?

20 A. Would you repeat the name.

21 Q. Mr. Joseph Sheridan, the second name
22 on the list.

23 A. Oh, okay. The information contained
24 in the case file described Mr. Sheridan as an
25 electrician, while the database indicated he was

1 in construction. The determination of disease
2 diagnosed in the case file indicated probably
3 asbestosis, whereas the database reflected the
4 disease diagnosed to be pleural plaques.

5 What I would comment on this
6 particular individual case file was that there
7 seemed to be, even though it was a limited
8 amount of material in the file, a difficulty in
9 getting an adequate reflection of the file
10 contents by reading the database entries.

11 Q. And so, what did Owens Corning do or
12 should not have done, in your opinion, that you
13 would criticize?

14 A. Within this file, there is indication
15 that data transcription from the primary records
16 of the case file documents into the database
17 construction was somewhat deficient in quality,
18 and that an effort should have been made to
19 impose a higher level of quality control on the
20 data summaries in the database.

21 Q. What does that have to do with
22 settling the claim?

23 A. Well, like any database that is used
24 for making determinations, it's an old computer
25 terminology, garbage in, garbage out. If you

1 don't have good, accurate data going into the
2 file reflective of the actual facts in the case,
3 you can't use the subsequent documents for
4 making decisions.

5 Q. And do you know what, in fact, all of
6 the material was that was used to make a
7 decision in the case?

8 A. It was represented to me that the
9 database was the information purported to be
10 used for going forward with subsequent actions
11 on cases.

12 Q. Do you know whether Mr. Sheridan was
13 part of a group settlement or an individual
14 settlement?

15 A. No. I don't know the legal
16 structures of cases and claimants.

17 Q. Would that be true for all of these
18 people?

19 A. That's correct.

20 Q. And would it be fair that you don't
21 know who any of them were represented by?

22 A. That is correct.

23 Q. Or the amount that was paid to settle
24 the claim?

25 MR. KEMNA:

1 Objection to form.

2 A. Correct. My task here was to
3 evaluate the file contents for information about
4 exposures and alternate exposure situations that
5 might have pertained for an individual case
6 file.

7 MR. FORMAN:

8 Q. Did you see any information in any of
9 the files reflected on Exhibits 3 and 4 in which
10 the claimant denied ever having been exposed to
11 asbestos?

12 A. The Thelma Price file had no
13 information at all about exposure.

14 Q. Does your summary on Exhibit 3
15 reflect that she was diagnosed with pleural
16 plaques?

17 A. The summary available from the
18 database summary documents indicated that.

19 Q. And does it reflect that her husband
20 worked as an insulator?

21 A. The database summary indicated her
22 husband worked as an insulator.

23 Q. Isn't it a fairly common thing to
24 find in a report of the asbestos literature
25 reports of wives who develop pleural disease

1 from exposure to asbestos on their husband's
2 clothing?

3 A. What's the question?

4 Q. Isn't it fairly common to find
5 reports of wives who develop pleural plaques
6 from exposure to asbestos on their husband's
7 clothing?

8 A. It is common in the literature to
9 understand conditions of disease related to
10 asbestos, including pleural plaques. The
11 concern about this particular case file was
12 there was no file, there was only a database
13 summary. So there were no records in this file
14 that I would class as primary documents to
15 examine.

16 Q. If she developed pleural plaques due
17 to exposure to asbestos from her husband's
18 clothes, that wouldn't be an unusual situation,
19 would it? I mean, that happens and is reported
20 frequently in the asbestos literature?

21 MR. KEMNA:

22 Objection to form.

23 A. That is a recorded disease event,
24 yes.

25 MR. FORMAN:

1 Q. If we go down through the remaining
2 cases on Exhibit 3, maybe just to speed this up,
3 the case of Mr. Ralph Wilson, Mr. Johnny Alford,
4 Mr. Willard Farleigh and Mr. Allen Robert --
5 Robert Allen, I guess, would you agree that each
6 of those cases reflected information that
7 indicated there was a diagnosis of asbestosis
8 or, let me put it this way, at least a diagnosis
9 of asbestosis in each of those cases by some
10 medical doctor?

11 MR. KEMNA:

12 Objection to form.

13 A. There was a disease report of
14 asbestosis in reflections from the database
15 information. The database, in one instance,
16 Mr. Alford, as we discussed earlier, had a
17 conflicting diagnosis. And in the two cases of
18 Mr. Farleigh and Mr. Allen, additional disease
19 states were included in the claim file
20 information that were not included within the
21 database information.

22 MR. FORMAN:

23 Q. You said "additional disease states."
24 What do you mean?

25 A. For example, in Mr. Farleigh, pleural

1 plaques was included within the claims file
2 material, but was not included within the
3 database. In the case of Mr. Allen, pleural
4 fibrosis and possible mesothelioma was included
5 within the claims file information, but was not
6 included within the database.

7 Q. But you would agree that, from either
8 the claim file or from the database in each of
9 those individuals that we just went over, at
10 least some doctor had said, in my opinion, they
11 have a diagnosis of asbestosis?

12 MR. KEMNA:

13 Objection to form.

14 A. Yes. There were medical records in
15 the file contents for each of those four
16 individuals which would have included an
17 asbestosis determination.

18 MR. FORMAN:

19 Q. Now, looking at Exhibit 4, in the
20 case of Mr. Nelson, there is a reference to oat
21 cell lung cancer. Do you see that?

22 A. Yes.

23 Q. Is that a form of lung cancer that is
24 commonly associated with cigarette smoking?

25 A. Yes.

1 Q. Is there any form of lung cancer
2 which you would contend is not due to cigarette
3 smoking?

4 A. I'm not a sufficient diagnostician to
5 be able to comment on that.

6 Q. Okay.

7 A. I'd call reference to that comment
8 about lung cancer, that the first two words were
9 included within the database; the last two words
10 were not.

11 Q. What two words are you talking about?

12 A. The last two words, oat cell, that
13 was in the case file materials.

14 Q. And in the case of Mr. Sterner,
15 Mr. Piotti, and I'm not sure if that is Mr. or
16 Mrs. Teets, Chancey R. Teets, the information
17 that you had available to you just indicated a
18 diagnosis of lung cancer?

19 A. That's correct. In those instances,
20 Mr. Sterner's file contained medical files. It
21 was a rather large size file. For Mr. Piotti,
22 there was no medical documentation in the case
23 file; however, the database reported the
24 presence of lung cancer. The only contents that
25 were in that file were a release and a -- copies

1 of checks.

2 Q. And he was -- I'm sorry. Was he
3 reported to be an insulator?

4 A. He was reported to be an insulator in
5 the database. In the case of Mr. -- I believe,
6 Mr. Chancey Teets, the database reflected the
7 disease, lung cancer. File information
8 contained only a legal notice, aside from the
9 database claim summary. And there was no
10 medical information there in the case file
11 primary resource documents to comment on the
12 nature of how a lung cancer diagnosis was made.

13 Q. Do you know whether the claim files
14 that you observed and saw were the same or in
15 the same condition as they would have existed at
16 the time these settlements occurred?

17 A. The history of the claims files prior
18 to my receiving them was reported to me by the
19 attorneys from Shook, Hardy & Bacon and
20 contained information that was reported to them
21 by representatives of Owens Corning. So my own
22 personal knowledge does not extend to that, but
23 the information that was provided to me was that
24 these were the entire contents of the files for
25 these individuals.

1 Q. Were those the entire -- Was it
2 reported to you that it was the entire content
3 of the file at the time that it was turned over
4 to Shook, Hardy, or was it reported to you that
5 this was the entire content of the file as it
6 had ever existed?

7 MR. KEMNA:

8 I'm going to object to the questions
9 that relate to communications between counsel
10 and the expert witness that fall outside of the
11 scope of the permitted questions pursuant to the
12 Court's order that is already entered as an
13 exhibit in this deposition.

14 MR. FORMAN:

15 Q. Let me ask it this way, then, Dr.
16 Jurinski. Do you know whether, in fact, at some
17 time in the past, depending on when this case
18 arose, when it was settled, when it was
19 evaluated, whether there may have been more
20 information available than was later existing in
21 the claim file at the time it was turned over to
22 Shook, Hardy?

23 A. I personally have no knowledge or way
24 of knowing that.

25 Q. In your report I'm looking at that

1 you've provided in this case -- Do you have that
2 with you?

3 A. I believe so.

4 Q. If you will turn to, I think it is
5 Page 3, a discussion of risk factors, did
6 anybody help you prepare this report?

7 A. This report was prepared as a result
8 of conversations between myself and the
9 attorneys with Shook, Hardy. And they
10 constructed the document itself, and then we
11 reviewed the contents and wording of the
12 document to determine did I fully agree with the
13 way things were written and the general flow and
14 construct of the report.

15 Q. So you didn't actually write it?

16 A. I did not pen this or type this
17 document.

18 Q. You didn't dictate it?

19 A. I didn't dictate it. I reviewed it
20 as it was working as a developing document.

21 Q. It was prepared for you, and you
22 approved it?

23 A. It was prepared for me. I went
24 through it with them in initial stages, made
25 changes and subsequently, after changes were

1 incorporated, approved.

2 Q. Has this report been used in any
3 other case?

4 A. The body of the report has, I
5 believe, possibly been used in *Falise* with the
6 exception of the "Bases for Opinions" section
7 which would be different.

8 Q. Did you testify by deposition in the
9 *Falise* case?

10 A. I'm sorry. The last page,
11 "Individual Issues" and the "Bases for Opinion."
12 I'm sorry.

13 Q. Did you testify by deposition in the
14 *Falise* case?

15 A. No. I did not.

16 Q. No deposition or trial testimony
17 occurred in that case?

18 A. That's correct.

19 Q. You just submitted a report?

20 A. That's correct.

21 Q. Have you submitted a report in any
22 other tobacco cases --

23 A. No.

24 Q. -- besides *Falise* and this one?

25 A. No.

1 Q. Under the paragraph that starts "risk
2 factors," the last sentence of that paragraph
3 says, all such exposures should be measured and
4 accounted for in any attempt to come to
5 reasonably -- or a reasonable -- Do you mean
6 reasonably? It is reasonable accurate, but it
7 should be "reasonably," I suppose, shouldn't it?

8 A. I believe there is a comma missing
9 after "reasonable."

10 Q. All right. -- to a reasonable,
11 comma, accurate assessment of risk in an
12 individual. Now, do you intend to offer any
13 opinion in this case about an accurate
14 assessment of the overall risk in these 18
15 individuals?

16 A. I'm stating that the risk factors
17 themselves need to be evaluated, not that I'm
18 going to put a number on a relative risk. The
19 agents which can cause lung disease, I'm
20 classifying as risk factors as a group. It is a
21 term of the profession. They are a risk factor
22 for the disease. That doesn't mean I'm going to
23 calculate a risk, per se. I'm trying to
24 evaluate exposures to those different risk
25 factors.

1 Q. So you are not going to make an
2 assessment of risk yourself in these cases?

3 A. No. I am talking about the exposures
4 to those risk factors.

5 Q. Whose decision was it to use the term
6 "risk factor"?

7 A. I don't know. It is a term of art.

8 Q. Now, in the next paragraph, you said,
9 several variables are important in estimating
10 the risk of developing lung cancer from the
11 inhalation of asbestos fibers, including fiber
12 type. What opinion do you intend to offer in
13 this case about fiber type and asbestos in
14 causing lung cancer?

15 A. The fiber types are characteristics
16 of different commercial materials that are in
17 common use, or have been in common use,
18 throughout the country. And specifically, OSHA
19 has developed regulatory controls for many
20 different fiber types, in addition to the three
21 primary ones which are found in commercial
22 products.

23 For example, tremolite and actinolite
24 are very rarely found in commercial products.
25 And so, fiber type being identified, for

1 example, in one case file there was a report of
2 an amosite diagnosis in lung tissue. That kind
3 of information would be confirmatory that that
4 person was exposed to asbestos associated with a
5 commercial asbestos product.

6 Q. Do you intend to offer any opinion
7 that any particular asbestos fiber type is more
8 carcinogenic or less carcinogenic than another
9 asbestos fiber type?

10 A. No. I don't hold that opinion.

11 Q. All right. You said you also had to
12 take into account fiber size. Do you intend to
13 offer any opinion about fiber size in this case?

14 A. In evaluating exposure, fiber size is
15 important based upon the kinds of job operations
16 that a person might have been associated with.
17 For example, if a high energy intensive device
18 such as a power saw or drill were commonly used
19 in the presence of asbestos products, then a
20 disproportion in fiber sizes could occur from
21 the application of that energy source to the
22 fibers.

23 So fiber size may vary depending upon
24 the kind of work that was being done at the site
25 to the point where it differs from the original

1 fiber size that was contained within the product
2 when it was manufactured.

3 Q. Do you intend to offer any opinion in
4 this case that fiber size is a relevant issue
5 with respect to any of these specific cases
6 reflected on Exhibit 3 or 4?

7 A. I could not find in the files any
8 information that would allow me to utilize fiber
9 size information in the data contained within
10 the files.

11 Q. Now, you say in the next sentence
12 that the dosage of inhaled asbestos cannot
13 accurately be determined based solely on the job
14 title of the individual for several reasons, and
15 then you go on to list them. Are you familiar
16 with any literature that has attempted to
17 estimate asbestos exposure, the amount of
18 asbestos exposure, based on job title?

19 A. Yes. There have been several
20 publications that are associating measured
21 exposures of asbestos fibers that people have
22 encountered at specific job tasks.

23 Q. And have you ever written to any
24 journal in which such articles have appeared and
25 said that that is erroneous to have done that,

1 that is, to estimate asbestos exposure based on
2 job title?

3 A. No. I have not written to a journal
4 for that purpose. The use of that information
5 allows the approach that we discussed in an
6 earlier question where I was asked about would I
7 make quantitative fibers per cc statements. And
8 I said no, I could not accurately give you those
9 numbers, but we could talk about low, medium or
10 high.

11 Q. By doing that kind of assessment
12 that you have referenced in the journals, it
13 gives basis for trying to make some
14 classification into low, medium or high
15 categories.

16 Q. Have you seen publications, for
17 example, by Dr. Selikoff in which he has offered
18 opinions about the degree of exposure to
19 asbestos based on certain job titles?

20 A. I have seen that he has used that,
21 yes.

22 Q. And do you think he is erroneous in
23 doing that?

24 MR. KEMNA:

25 Objection to form.

1 A. I don't think that is erroneous. I
2 think it is limited. And the limitation being
3 that the accuracy of the definition of exposure
4 suffers from significant error limits in the
5 quantitation aspects of it.

6 MR. FORMAN:

7 Q. Are you aware of any criticism of
8 those type of publications by Dr. Selikoff in
9 which he has estimated asbestos exposure in
10 terms of fibers per cc based on job titles?

11 A. I haven't been aware that criticism
12 is there, but I do understand the variability in
13 these types of numbers when they are published.

14 Q. In any publication involving exposure
15 to asbestos, are you familiar with an author
16 taking the position that it is unreasonable to
17 predict the level of exposure to asbestos based
18 on job title?

19 A. I don't recall anyone saying it was
20 unreasonable to predict, but that did not
21 eliminate the need to monitor for particular
22 situations because anticipating exposure and
23 evaluating exposure are two different kinds of
24 events.

25 Q. But when you go back in time after

1 the fact and the measurements haven't been made
2 previously, haven't investigators commonly used
3 job titles as a surrogate for the amount of
4 exposure that people have experienced?

5 A. That is correct. They have. And in
6 the process of doing that, there are some
7 inherent errors built into that procedure.

8 Q. Well, in any estimate of exposure,
9 even if it is measured, one can never say that
10 exact degree of exposure will exist under all
11 conditions from all time, can you?

12 A. No. That is correct. You use a
13 representation.

14 Q. And would you be personally critical,
15 as an industrial hygienist, of anybody who
16 predicted the level of exposure to asbestos of a
17 worker based on job titles --

18 MR. KEMNA:

19 Objection to form.

20 MR. FORMAN:

21 Q. -- and the literature which has
22 described the amount of exposure to asbestos
23 based on job titles?

24 MR. KEMNA:

25 Objection to form.

1 A. I would only be critical if they
2 tried to take it to a high level of certainty.

3 MR. FORMAN:

4 Q. And when you say "high level of
5 certainty," what do you mean by that?

6 A. Well, in doing projective studies
7 such as you are describing, there are job titles
8 which might be described as high exposure,
9 medium exposure, low exposures. If one tried to
10 get more definitive and break it down into 20 or
11 25 different gradations of exposure, I would be
12 critical of that.

13 Q. Are you familiar with any attempts by
14 tobacco companies to develop dosimetry models
15 for estimating the amount of exposure to
16 asbestos at job sites?

17 A. I'm not familiar with that.

18 Q. Would that be a reasonable thing to
19 do?

20 MR. KEMNA:

21 Objection.

22 A. Dosimetry of asbestos?

23 MR. FORMAN:

24 Q. Yes. In the absence of any prior
25 measurements on the job site, to go back after

1 the fact and to try to develop models to predict
2 what the exposure would have been in the past.
3 Is that an unreasonable and wrong thing to do?

4 MR. KEMNA:

5 Objection to form.

6 A. Those types of modeling activities-
7 are useful at times. And I have myself been
8 engaged in a project in which we tried to do
9 just that, to reconstruct approximations of data
10 that would have existed 20 years prior that had
11 not been measured. And it's an extensive
12 operation to do that.

13 MR. FORMAN:

14 Q. Is it commonly done in your field of
15 industrial hygiene?

16 A. No. It is not commonly done.

17 Q. And is it your opinion that any
18 models developed in doing that are inherently
19 unreliable?

20 A. Speaking in general about models, I
21 could not comment. Each model that is developed
22 is based on a certain premise, or series of
23 premises, and there is no answer to your generic
24 question.

25 Q. Would it be of interest to you to

1 know whether any tobacco companies had gone back
2 and tried to predict the levels of past exposure
3 using dosimetry?

4 MR. KEMNA:

5 Objection.

6 A. I have not even heard of the subject
7 before your introducing it today. I would
8 probably find it interesting to see.

9 MR. FORMAN:

10 Q. Now, you say the only accurate way to
11 determine exposure is to measure exposure; is
12 that right?

13 A. Yes. If one wishes to have a
14 quantitative number.

15 Q. And exposures cannot be accurately
16 estimated; is that your opinion?

17 A. Accurate exposures.

18 Q. Well, did your sentence read,
19 exposures cannot be accurately estimated?

20 A. What sentence are we in here?

21 Q. We're in the paragraph under "risk
22 factors," Sub-paragraph 1.

23 A. One, okay. The only accurate way to
24 determine exposure is to measure exposure. I
25 think "accurate" is included in that sentence.

1 Q. And so, any model or prediction of
2 past exposure that is not based on measurements
3 cannot be accurate; is that correct?

4 A. It may be approximate. It won't be
5 accurate.

6 Q. It won't be accurate enough for an
7 industrial hygienist like you?

8 A. It would depend upon the purpose for
9 which the data was to be used.

10 Q. Well, what if it was used --

11 A. For every incident where you do some
12 kind of evaluation, you have a purpose for what
13 you are doing. And the purpose needs to be
14 stated in the beginning so that you know you
15 will arrive at a sufficient level of accuracy
16 for the purposes that you have. If, from the
17 front end, you decide you can reach reasonable
18 accuracy, you can proceed reasonably with the
19 work. If your determination indicates that your
20 effort will give too wide an error zone to make
21 the determination of any use, then there is no
22 sense in proceeding.

23 Q. Would it be reasonable to use
24 estimates derived in that matter for purposes of
25 litigation to compare the degree of exposure to

1 asbestos to the degree of exposure to cigarette
2 smoke?

3 A. I believe the determination of
4 exposure, as we are talking about here in
5 reference to asbestos, is probably less poorly
6 understood in terms of individuals than is the
7 exposure of an individual to cigarette smoking
8 based on the fact that self-reported smoking
9 habits are probably more precise than estimated
10 asbestos exposures within a workplace.

11 And so, you would be comparing apples
12 and oranges in terms of trying to make those
13 types of comparisons. You have one kind of data
14 that is probably more precisely known than the
15 other.

16 Q. That being smoking?

17 A. Smoking, right.

18 Q. Is it your opinion that job titles do
19 not provide necessary detail about exposure such
20 as the type of material, ventilation
21 characteristics, personal equipment used and
22 equipment efficacy, actions of co-workers,
23 duration of exposure, individual respiration
24 rates, work site abatement efforts and so forth?

25 A. Yes. This use of job titles is most

1 frequently not sufficiently detailed in
2 determinations of exposure potential. This is
3 especially true within government agencies where
4 job titles and work duties sometimes are quite
5 in variance.

6 Q. If you don't have prior estimates of
7 exposure taken in the past at a work site, and
8 you try to go back and estimate what the exposure
9 was, how do you do it?

10 A. You do make analogies to similar
11 operations that you are aware of or for which
12 you have data. And so, that is a common
13 practice. That provides you with a starting
14 point for making an assessment determination for
15 exposures.

16 Subsequent to that, you would follow
17 it up with actual exposure monitoring to see did
18 your initial premise correspond to the reality.

19 Q. Well, if the exposure was already
20 over and in the past, you couldn't follow that
21 up with current --

22 A. Not if you're talking historical
23 exposures.

24 Q. Right. When you are trying to
25 estimate historical exposures and you don't have

1 exposure measurements to fall back on at a job
2 site, how do you do it?

3 A. Well, an earlier alternative that we
4 discussed, and that was modeling, which we
5 indicated was an expensive process.

6 Q. How do you model it?

7 A. You model it by starting with the
8 current day situation and investigation of
9 historical changes in the structure of the
10 facility, which would include changes in
11 ventilation systems, control devices, etcetera.
12 And then, strip off the protective factors that
13 are provided by those devices to reconstruct a
14 historical exposure concentration.

15 Q. Do you believe that asbestos exposure
16 and cigarette smoking interact synergistically
17 to cause lung cancer?

18 A. I'm certainly well aware of the
19 literature on synergy between those two factors.
20 My current reading of the literature is that
21 there is still a lot of discussion, argument and
22 disagreement over conclusions.

23 I understand that the people who
24 smoke and who are exposed to asbestos have what
25 appears to be a higher than additive level of

1 disease incidence. I stop short of saying -- or
2 labeling things as being synergistic. I'm not
3 in the business of doing epidemiological work.
4 I do read the information that is available, and
5 I recognize where disputes are still in
6 existence.

7 Q. What scientists are you aware of who
8 have indicated they do not accept the
9 interaction between asbestos and smoking in
10 causing lung cancer as synergistic?

11 A. I can't think of the name of an
12 individual right now.

13 Q. Can you identify any publication
14 which you have read in the last five years in
15 which an author has stated that, in my opinion,
16 the interaction between asbestos and cigarette
17 smoking in causing lung cancer is not
18 synergistic?

19 A. I can't remember the citation for the
20 article. I recall reading an author who
21 attributed it as additive effects.

22 Q. In the last five years?

23 A. I'm falling short on the details of
24 the article. I can't quote you the date or the
25 citation for the article. This is not really my

1 field of expertise.

2 Q. Have you inquired of any tobacco
3 company what their position is with respect to
4 whether there is synergy between asbestos and
5 cigarette smoking in causing lung cancer?

6 A. No. I have not.

7 Q. Do you have any opinion about the
8 degree of the increased risk of lung cancer
9 among workers exposed to asbestos in various
10 occupations? Let me give you an example of
11 where I'm going with this. Do you have an
12 opinion about what has been reported to be the
13 degree of increased risk of lung cancer among
14 shipyard workers exposed to asbestos?

15 A. I tend to think in terms of an
16 industrial hygienist in evaluating exposures.
17 And so, in the case of the shipyard workers,
18 which you mentioned, I would consider that they
19 would have had very significant employment
20 history of exposure to asbestos, as opposed to
21 some other groups working in different places
22 who would not have.

23 Q. And are you able to give me an
24 opinion about the degree of reported increased
25 risk in shipyard workers from asbestos exposure?

1 A. A numerical number for risk, no, I
2 can't quote risk numbers like that. I deal
3 mostly with exposures in comparisons to
4 occupational limits.

5 Q. Have you seen studies by persons such
6 as Dr. Selikoff which have estimated the level
7 of exposure to workers in shipyards in terms of
8 fibers per cc?

9 A. I have read those in the past. I
10 can't cite them for you verbatim.

11 Q. Do you recall any ranges he reported
12 for shipyard workers?

13 A. All I'm recalling was they were high.
14 I don't remember the numbers.

15 Q. Do you recall whether the reported
16 increased risk by investigators like Dr.
17 Selikoff is greater or less than twofold?

18 A. The increased risk of lung cancer?

19 Q. In shipyard workers.

20 A. In shipyard workers?

21 Q. Yes.

22 A. Yes. I recall that it was greater
23 than twofold.

24 Q. And where do you recall that being
25 published?

1 A. I believe that was in the National
2 Academy of Sciences document that we talked
3 about earlier this morning.

4 Q. The asbestoform fiber document?

5 A. I believe that it was in that
6 document in reference there.

7 Q. Anybody else you know of that has
8 reported on the risk of lung cancer in shipyard
9 workers due to asbestos?

10 A. Not that I can recall now.

11 Q. Do you have any other information
12 with you in your file there?

13 A. This is the Notice of Deposition I
14 received, a copy of my expert report which we
15 just went through, the reliance materials which
16 we earlier discussed, and the others were
17 Exhibits 1 and 4.

18 Q. Do you intend, in your testimony, to
19 discuss the contents of any of the material that
20 is in your list of reliance materials?

21 MR. KEMNA:

22 Objection to form.

23 A. The last item, I believe, is
24 responsive to your question there.

25 MR. FORMAN:

1 Q. Putting aside the claim files, do you
2 intend to discuss the contents of any of this --

3 A. The contents of specific literature?

4 Q. Yes.

5 A. Only should I be asked specific
6 questions or asked to read from an article and
7 comment on an article. As of this particular
8 point in time, I have made no such plan.

9 Q. In other words, you're not planning
10 on, just for example, saying -- I just picked
11 out one here. There's an article on Page 10 by
12 B.T. Mossman and A. Churg, "Mechanisms in the
13 Pathogenesis of Asbestosis and Silicosis," that
14 you're going to take that article and say, this
15 is an article I relied on in my opinion in this
16 case, and here is what important about the
17 article?

18 MR. KEMNA:

19 Objection.

20 MR. FORMAN:

21 Q. That's what I want to know.

22 MR. KEMNA:

23 Objection.

24 A. As I just indicated, unless
25 specifically asked at a subsequent point, for

1 example, during trial, of commenting on that, it
2 is not today my intent to do that as part of my
3 opinion. My opinion will focus upon those items
4 that were discussed in detail earlier and which
5 are included as the last item on that list
6 naming the claims files. But the literature
7 citations were provided as reference source
8 information, not that my specific opinion
9 testimony is going to be based upon any one of
10 those specific literature articles.

11 MR. FORMAN:

12 Q. I think I'm about through. I want to
13 ask you one more time, for the record, if you
14 would be willing to tell me whether you engaged
15 in any discussion with anyone prior to today
16 about printing out this material that has been
17 made Exhibit 3 and 4 and furnishing it prior to
18 the deposition?

19 MR. KEMNA:

20 Repeat my objection, for the record,
21 that that type of question is explicitly outside
22 the realm of permissible questions regarding
23 communications between counsel for defendants
24 and one of their expert witnesses.

25 We have gone over this exact

1 territory previously in the deposition. At that
2 time, I advised Dr. Jurinski of the reality that
3 in the context of this case, with this order
4 having been issued and the order being
5 applicable to this deposition, that he is not
6 required to answer any question, such as the one
7 that is posed, as the basis for this objection.

8 And I'd just advise Dr. Jurinski he
9 need not answer the question.

10 MR. FORMAN:

11 Q. Dr. Jurinski, did you have a
12 conversation to that effect with anyone other
13 than an attorney?

14 MR. KEMNA:

15 Same objection, same instruction.

16 MR. FORMAN:

17 What is the basis for instructing him
18 not to answer with respect to conversations with
19 someone other than an attorney?

20 MR. KEMNA:

21 Counsel of record in this case
22 includes counsel and anyone who assists counsel
23 in the course of preparing the case.

24 MR. FORMAN:

25 Is that what the order says?

1 MR. KEMNA:

2 Let's take a look at the order.

3 (Off the Record.)

4 MR. KEMNA:

5 I will just state, for the record,
6 that if you want to read the explicit language
7 in that order, and it refers to counsel, you can
8 make the decision as to whether you want to try
9 to interpret that language in a manner that
10 would draw some fine line between actual
11 communications with people who are qualified as
12 lawyers in representation of a client in this
13 case and those that work directly with the
14 lawyers in preparing this case for trial. And
15 then, we can address that matter with the Court
16 at some later date to make a determination of
17 whether that is an appropriate interpretation of
18 that language.

19 MR. FORMAN:

20 Normally, I would not have inquired
21 into this area at all, had it not been for the
22 conversations with Mr. Tepikian and the exchange
23 of correspondence between Mr. Tepikian and me
24 about this deposition. But, as I indicated
25 earlier in the deposition, I feel like there was

1 an improper failure to disclose this information
2 prior to the deposition. I feel like it clearly
3 should have been disclosed prior to the
4 deposition. And it is apparent from the
5 instructions that you have given Mr. Jurinski
6 that this was a deliberate refusal to provide
7 this information prior to the deposition,
8 despite the conversations I had with
9 Mr. Tepikian and despite the correspondence I
10 had with Mr. Tepikian.

11 MR. KEMNA:

12 Let's be clear on the record. We
13 have an order in place in this case that counsel
14 on both sides of this case recognize is in place
15 and applies directly to this deposition as it
16 has applied to depositions that have occurred
17 previous to this where witnesses from Owens
18 Corning were the deponents. And at that point
19 in time, the same provisions were insisted on
20 being applied to the deposition circumstances
21 applying to this case.

22 My objection to your line of
23 questioning relates explicitly to the orders of
24 the Court and the directions given that counsel
25 will not inquire into areas outside of the scope

1 permitted by the order. Your implication that
2 somehow that carries meaning beyond simply
3 insisting upon the application of the order of
4 the Court and making absolutely sure that no
5 waiver is implied by a lack of willingness to
6 object strenuously to the application of the
7 order is exactly what this is all about.

8 I pay attention to the orders of the
9 Court that are explicitly stated in a written
10 order that has been made an exhibit in this
11 deposition. There is absolutely no reason for
12 it to be construed any way other than having
13 direct application to this deposition. And it
14 is my insistence in representing my client in
15 this matter that I will not take any position
16 less than the position insisting upon the
17 explicit application of the order of the Court
18 and in no way implying that we can waive it
19 under particular circumstances of interpretation
20 by plaintiffs' counsel in regard to this
21 deposition or any future deposition.

22 MR. FORMAN:

23 I think our position is clear.

24 That's all of the questions I have.

25 (Deposition concluded at 3:00

p.m.)

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CERTIFICATE OF COURT REPORTER

I, CANDACE O'BARR HOLLEMAN, C.S.R., Court Reporter and Notary Public, in and for the County of Harrison, State of Mississippi, hereby certify that the foregoing pages contain a true and correct transcript of the testimony of the witness, as taken by me at the time and place heretofore stated, and later reduced to typewritten form by computer-aided transcription under my supervision, to the best of my skill and ability.

I further certify that I placed the witness under oath to truthfully answer all questions in this matter under the authority vested in me by the State of Mississippi.

I further certify that I am not in the employ of, or related to, any counsel or party in this matter, and have no interest, monetary or otherwise, in the final outcome of the proceedings.

Witness my signature and seal, this the 2nd day of March, 2001.

Candace O'Barr Holleman
Candace O'Barr Holleman, CSR #1260
My Commission Expires July 30, 2003

WITNESS SIGNATURE SHEET

I, _____, do
solemnly swear that I have read the foregoing
_____ pages and that the same is a true and
correct transcript of the testimony given by me
at the time and place hereinbefore set forth,
with the following corrections:

PAGE: LINE: SHOULD READ: REASON FOR CHANGE:

NOTARIZATION

I, _____, notary public
for the State of _____,
County, do hereby certify that _____
personally appeared before me this _____ day of
_____, 199____, at _____.
My Commission Expires:

(NOTARY PUBLIC)

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HUMPHREY

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSISSIPPI

EZELL THOMAS, et al.

PLAINTIFFS

AND

OWENS CORNING

VS.

CIVIL ACTION NO.: 96-0065

R. J. REYNOLDS TOBACCO COMPANY, et al.

DEFENDANTS

**NOTICE OF DEPOSITION OF DR. NEIL JURINSKI
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that Owens Corning will take the deposition of Dr. Neil Jurinski on February 23, 2001, at 9:00 a.m. at the offices of Shook, Hardy & Bacon, 600 14th Street, N.W., Suite 800, Washington, D.C.

This deposition is being taken for all permissible purposes under the Mississippi Rules of Civil Procedure and Evidence, including but not limited to the preservation of testimony for trial. Dr. Jurinski is requested to produce to plaintiff, Owens Corning, all documents relied upon or reviewed in connection with his expert opinions, including any documents provided to him by any Tobacco Defendant or such defendant's agent or representative (including any attorney) ten days prior to the deposition.

The deposition will be conducted upon oral examination before an official court reporter or other individual duly authorized to administer oaths, and will be recorded stenographically. The deposition will continue from day to day until completed.



52434 2344

You are invited to attend and participate in the manner provided in the Mississippi Rules of Civil Procedure.

This the 12th day of February, 2001.

Respectfully submitted,

FORMAN, PERRY, WATKINS, KRUTZ
& TARDY, PLLC

By: 

RICHARD L. FORMAN, MS BAR #5427
WALTER G. WATKINS, JR., MS BAR #6988
TIM GRAY MS BAR #10192

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, Tim Gray, one of the attorneys for plaintiff, Owens Corning, do hereby certify that I have this day served a true and correct copy of the foregoing Notice of Deposition of Dr. Neil Jurinski and Request for Production of Documents via facsimile upon all counsel listed on Exhibit "A" attached hereto.

THIS, the 12th day of February, 2001.


Tim Gray, Esq.

BEST
COPY

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February 19, 2001

VIA TELEFAX and U.S. MAIL

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Forman, Perry, Watkins, Krutz & Tardy
1200 One Jackson Place
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RE: Owens Corning

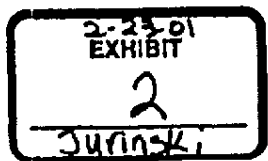
Dear Tim:

Enclosed please find a list of Dr. Jurinski's reliance materials.

Sincerely,

Bruce
Bruce R. Tepikian

cc: Thomas Defense Counsel



DR. JURINSKI RELIANCE MATERIALS

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Owens Corning claims files for Alford, Allan, Arena, Brown, Butler (Joe), Cummings, Doane, Farleigh, Hill, Learned, Minatrea, Nelson, Piotta, Price, Sheridan, Sterner, Teets and Wilson (Ralph), and corresponding Owens Corning database entries.

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HUMPHREY

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Thomas
v. OCF

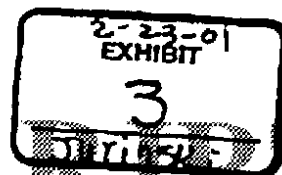
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in
HUMPHREY

Name (T)	OC ID#	City	State	DOB	Employer	Occupation	Chem Exp	Exp Conc	Empl Time	Smoker
Cummings, Jack	149532	Stratford; Shelton	CT	2/28/31	Raymark	manufacturing; plant worker	asbestos	?	37 yr	yes
Sheridan, Joseph W.	142284	Stafford	VA	3/12/24	DC Local 26 Union	construction; electrician	asbestos	?	44 yr	yes
Price, Thelma B.	19547	Knox County	TN	11/30/31	—	homemaker		?	?	?
Wilson, Ralph E.	43149	Pittsburg	PA	3/18/28	steamfitters local 449	insulator	asbestos	repeated intensive exposures to respirable asbestos fiber; very dusty environment, grossly visible dust	43 yrs	yes
Alford, Johnny	180498	Jacksonville	FL	3/9/34	railroad; CSX	machinist	asbestos	repeated exposures to ACM products at railroad locations	21 yrs	yes
Farleigh, Willard C.	140061	Chesapeake	VA	9/26/40	Norfolk Naval Shipyard	pipefitter	asbestos	moderate dust exposure	15 yrs	yes

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Pack Yrs	Disease Diagnosed	Rating	File Contents	Workplace Details	Other
33 yr @ 1.5 ppd; quit in 1989	pleural plaque, mild obstructive airways	0/1	data summary; affidavit; medical report; release; legal motions	dusty air; worked numerous plant jobs	
24 yr @ ? Ppd	pleural plaque; prob. Asbestosis	?	data summary; affidavit; medical report; release;	numerous heavy construction projects; USN 4 yrs	
?	pleural plaque;	?	data summary; (no other materials in file)	various through her husband who was an insulator	
13 yr @ <1 ppd	asbestosis	1/0; 1/1; 0/0	(moderate size file); data summary; affidavit; release; complaint; motions; medical records	various contractors; USN 2 yr; worked at powerhouses, steel mills, chemical facilities and large industrial plants; job history notes; employment record	
2 pack years; 5 yr @ 0.25 ppd; quit 1980	no disease; asbestosis	?	(moderate size file); data summary; affidavit; release; complaint; motions; answers to interrogatories; medical records; partial depo	US Army 2 yrs infantry; brickmaker 11 yrs; freight-handler, carman & machinist job tasks; did burning/welding 4 yrs;	one diagnosis found no disease
20 yr @ 1.5 ppd	pleural plaque; asbestosis	?	(moderate size file); data summary; complaint; motions; answers to interrogatories; medical records;	Giant Market 2.5 yr; US Gypsum 3 yr; Portsmouth Diaper 7 yr; residential plumber 6 yr; NNSY 15 yr;	

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Harrison Power

Allan, Robert B.

214229 Evans City PA

6/9/47 Station

pipecoverer

asbestos

long asbestos
exposure history;
tremendous
amount of
asbestos
exposure

22 yrs yes

in

HUMPHREY

52434 2369

20 yr @ 1/2 - 1
ppd

pleural fibrosis;
possible
mesothelioma;
asbestosis

1/0; 1/1

(large file); data summary;
complaint; motions, answers to
interrogatories; medical
records;

asbestos worker helper
(summer); apprentice
pipefitter; in powerhouses,
chem plants, refineries, major
construction

produced by RIRTC in HUMPHREY

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HUMPHREY

in

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KEY:

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Name (11)	OC ID#	City	State	DOB	Employer	Occupation	Chem Exp	Exp Conc	Empl Time	Smoker
Nelson, George B.	064648		IA	2/22/22	many	sheet metal worker; 10 Yr USMM engine Rm engineer	asbestos			yes, cigars; very few cigarettes; doesn't inhale
Stern, Arthur J., Jr.	037965		NJ	1/7/25	Squibb & Sons; The Brunswick Brake Co. & Stern Auto Clinic (own company)	friction; chemical maintenance worker; auto mechanic	asbestos; chem fumes, NOS; gasoline exhaust fumes; jet oil	long asbestos exposure history	33 yrs	yes
Piotti, Bernard	048013		PA	12/19/16		insulator	asbestos			
Teets, Chancey R.	189847		PA	3/13/13		railroad worker				
Arena, Louis L.	095098		LA	9/28/22	multiple shipline employers from 1941 - 1979	shipyard; sailor	asbestos			(no information)
Brown, Abraham	031365		MA	12/12/11	Bethlehem Steel shipyard	construction; electrician; (employed '37- '79);	asbestos; cotton dust; welding fumes;		42 yrs	yes

2-23-01
EXHIBIT
4
JURINEX

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Pack Yrs	Disease Diagnosed	ILO Rating	File Contents	Workplace Details	Other
?	lung cancer (oat cell), asbestosis, diabetes, hypercalcemia, p.o.pneumonia, hypertension		(large size file); complaints, response; job listing, ACM products used, medical recs. tax forms, earnings & time sheets; exposure list; answers to interrogatories;	Worked as union sheetmetal installer in numerous jobs over employment period. Had worked in US Navy and USMM as engine room engineer.	no knowledge of other exposures to listed chemicals or mfr'g processes
48 yr. @ 1.5 - 2 ppd	lung cancer	0/1; 1/0	(large size file); data summary; med files; pleadings; release; complaint; answers; depos;	Chem plant maintenance; brake repairs; pharmaceuticals	also contains records for Rose & Joe Theer
?	lung cancer		release; check copies	none	file has release of Robert & Ruth Shenker
?	lung cancer		claim summary; legal notice	none	
	lung cancer, asbestosis		(moderate size file); claim summary; med records; complaints; answers; sailing history 41-80;	none	
55 yr. @ 1-2 ppd	lung cancer (oat cell); pleural thickening		claim summary; med. Records; release; ans to interrog.; pleadings; document list	worked around ACM from other trades and used ACM products for many years as an electrician	exposures to cotton dust and welding fumes

52434 2373

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Wayne Gossett
Ford; US National
Guard; Primitive
Constr. Co.;
Certain-Teed
Products Co.,

laborer, car
sales; auto
detailer, truck
driver, forklift

Butler, Joe, Jr. San
297196 Bernadino CA

11/15/32 USPS

operator, janitor asbestos

24 yrs yes

HUMPHREY

Doane, Woodrow
M.

130162

FL

3/26/17

shipyard worker asbestos

yes

Refrigerated Air
Cond Svc Shop,
Los Alamitos

Learned, Robert A.

123436

CA

8/25/12 Steam Plant

insulator;
steamfitter

asbestos

13 yrs yes

Hill, Caleb H.

151798

OH

6/11/22

sailor; USMM
(28 yr)

asbestos

yes

produced by E.J.RTC

worked around ACM from other
trades and used ACM products;
worked in ACM plant making
products

HUMPHREY

29 yrs @ 0.5
ppd; quit 1982
lung
cancer(adenocarcino
ma), pleural plaque
and thickening;

43 yrs @ 1 ppd;
15 yrs pipe
smoking but
does not inhale;
quit 8 yrs prior
lung cancer;
asbestosis,plueral
plaques and
thickening;
emphysema;pulmona
ry fibrosis; COPD;
bronchopneumonia;a
spingillosis aspergillus
hyphae in lung

13 pack years;
quit 34 years
before
diagnosis
lung cancer;
asbestosis, interstitial
fibrosis

lung cancer

(large file) claim summary;
complaint; release; interrog;
ans to interrog.; med CT
findings; economic protection;
med reports; earnings reports;
SSA record; depo
(partial&full); summary table
air fiber samples,NTIS air
sampling report; court
motions; witness list; OCF
Exhibit list

claim summary; Ans to
interrog.;

(no medical records but very
extensive database medical
summaries)

claim summary; medical recs;
release; complaint; ans to
complaint; interrogatories;
notice of settlement

none

claim summary; complaint;
ans to complaint; motions;
notices; (note - expert reports
missing from file)

none

produced by RIRTC

in

HUMPHREY

refinery/cdr.
refinery worker
labor foreman at
UC plant for
B&R; hauled
hay; worked in
café; dump truck
driver; welder;
sandblaster (10
yrs); painter;
insulator's helper asbestos

Minatrea, Walter
E.

151169 Seadrift

TX

7/24/37 many

yes

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(moderate size file); claim summary; claims from another case; SSA earning stmt.; Dr. letter re slides; ans to interrogatories; Exhibit B - 27 page reference list; list of MD & tech witnesses; JME report; IRS forms;

While sandblasting used desert hood initially then fresh-air hood. Used both coarse and fine grade sand; swept up spent sand. With B&R removed insulation from piperacks, vessels and other petrochemical devices.

Tissue analyses SEM/EDXA showed presence of amosite asbestos plus silica and metal oxides (esp. iron) consistent with a wide variety of dust exposures. Other case file materials (Dawson) also in this file.

38 pack yrs lung cancer

5
HUMPHREY
in
produced by RJRT

LAW OFFICES

SHOOK, HARDY & BACON LLP

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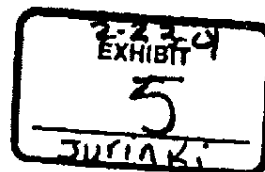
LONDON
ZURICH
GENEVA
MELBOURNE
BUENOS AIRES

February 20, 2001

VIA TELEFAX and U.S. MAIL

Richard L. Forman, Esq.
Forman, Perry, Watkins, Krutz & Tardy
1200 One Jackson Place
188 East Capitol Street
Jackson, MS 39225

RE: Owens Corning



Dear Rick:

Further to telephone conversation of today, Dr. Jurinski will offer the following opinions regarding the Owens Corning claim files:

Dr. Jurinski reviewed the claimant files to look for the existence of information to make an overall evaluation of potential hazards that can or may cause an injury and must be included in any determination of causation. This type of information includes: factual information regarding complete job or occupational history; documented exposure history - including any statements related to magnitude and duration of exposure; comments regarding any other occupational exposure or hazard; an evaluation of work practices, such as use of safety equipment; and, any other relevant occupational or avocational history.

Dr. Jurinski will offer the opinion that the information provided in the claimant files is extremely limited. Overall, the claimant files are missing a complete occupational history and lack sufficient information to evaluate any exposure over a given time period. Where factual information is available in a claimant file, Dr. Jurinski will use his background and practical experience to comment about industries and occupational risks. Where information is missing, Dr. Jurinski will describe the types additional information he would require for complete evaluation of an individual claimant file. Dr. Jurinski will comment that, overall, the claimant files are missing information that must be considered for the determination of causation.

Please call me if you have any questions.

Richard L. Forman, Esq.
February 20, 2001
Page 2

SHOOK, HARDY & BACON LLP

Sincerely,



Bruce R. Tepikian

cc: Special Master Sneed (via facsimile)
~~Thomas~~ Defense Counsel (via facsimile)

produced by RJR/C
in
HUMPHREY

9

HUMPHREY

in

Produced by NRTC

**FORMAN
PERRY
WATKINS
KRUTZ &
TARDY, PLLC**

ATTORNEYS AT LAW

RICHARD L. FORMAN
(601) 960-8607

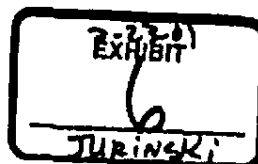
February 21, 2001

1200 ONE JACKSON PLACE
188 EAST CAPITOL STREET
POST OFFICE BOX 22608
JACKSON, MISSISSIPPI 39225-2608
TELEPHONE: (601) 960-8600
FACSIMILE: (601) 960-8613

VIA FACSIMILE

Bruce Tepikian
Shook, Hardy & Bacon L.L.P.
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118

Re: Deposition of Dr. Jurinski



Dear Bruce:

This will acknowledge receipt of your fax just received a few minutes ago. I had expected to receive information which would allow me to determine whether he would offer opinions about the contents of any particular claim file. Nothing of the sort was provided. For example, your letter says:

"Where factual information is available in a claimant file, Dr. Jurinski will use his background and practical experience to comment about industries and occupational risks. Where information is missing, Dr. Jurinski will describe the types of additional information he would require for complete evaluation of an individual claimant file. Dr. Jurinski will comment that, overall, the claimant files are missing information that must be considered for the determination of causation."

I assume by this response that Dr. Jurinski will not comment on the specifics of any claim file since no information was provided in the form of any opinions or the basis for any opinion with regard to any particular claim file. No specifics of any kind are provided in your response; no "factual information" that is available is identified or described nor is any specific "comment" provided about any "industries" or "occupational risks". No description of the alleged "additional information" he would need is provided. In short, no specifics of any kind have been provided which would permit me to know what his opinions are or what the basis of any opinion is or may be in this case.

I am going to proceed with the deposition despite the fact that the CMO provisions with regard to opinions of expert witnesses has not been complied with in any manner because we are pressed for time to complete the depositions we need to take. I assume he will not offer any opinions regarding individual cases. If he does, in view of the complete failure to make any proper and reasonable disclosure of his opinions, we will move to strike any testimony he gives about any individual case.

52434 2382

Bruce Tepikian
February 21, 2001
Page 2

Very truly yours,

FORMAN, PERRY, WATKINS, KRUTZ & TARDY, PLLC

Richard L. Forman

Richard L. Forman

RLF/pok
Enclosure

cc: Special Master Robert W. Sheed (Via Facsimile w/enclosure)
Walker W. Jones (Via Facsimile w/enclosure)

c:\doc\RLF\Letters\Tepikian Feb 21.wpd

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in

HUNTER-PERRY

52434 2383

FEB. 20. 2001 2:47PM

NO. 3267 P. 2/3

BEST
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SHOOK, HARDY & BACON LLP

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GENEVA
MELBOURNE
BUENOS AIRES

February 20, 2001

VIA TELEFAX and U.S. MAIL

Richard L. Forman, Esq.
Forman, Perry, Watkins, Krutz & Tardy
1200 One Jackson Place
188 East Capitol Street
Jackson, MS 39225

RE: Owens Corning

Dear Rick:

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Please call me if you have any questions.

388780 1

52434 2384

FEB. 20. 2001 2:47PM

NO. 3267 P. 3/3

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COPY

Richard L. Forman, Esq.
February 20, 2001
Page 2

SHOOK, HARDY & BACON LLP

Sincerely,



Bruce R. Tepikian

cc: Special Master Sneed (via facsimile)
Thomas Defense Counsel (via facsimile)

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in

HUMPHREY

4
HUMPHREY
in
produced by RJRTC

Sep 22 00 04:37p

Shannon Law Firm. PLLC

6018945033

P. 2

BEST
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04

VACATION

CIRCUIT COURT MINUTES

SEP 08 2000

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSISSIPPI

EZELL THOMAS, et al.

AND

OWENS CORNING

VERSUS

R.J. REYNOLDS TOBACCO COMPANY, et al.

RECEIVED & FILED

SEP 08 2000

BURNELL HARRIS, Circuit Clerk

By 120 D.C.

PLAINTIFFS

CAUSE NO. 96-0065

DEFENDANTS

AGREED ORDER REGARDING EXPERT WITNESSES

THIS CAUSE came on for hearing upon the oral motion of the Tobacco Defendants and Owens Corning to limit testimony regarding the compensation of expert witnesses and testimony regarding communications between counsel and witnesses and the Court noting the agreement of the parties on said issue finds as follows:

IT IS ORDERED that no party may inquire at deposition or at trial of Owens Corning's claim against the Tobacco Defendants regarding the amount of financial compensation of any expert witness in any litigation, including this case.

IT IS FURTHER ORDERED that no party may inquire at deposition or at trial of Owens Corning's claim against the Tobacco Defendants regarding any communications between counsel for a party and an expert witness retained by such party, except that questions of the following nature may be asked at deposition and trial: (i) What were you asked by counsel to do in this case?; (ii) What did counsel tell you the issues were in this case?; (iii) What material, including but not limited to material produced in discovery did counsel provide for you to review in this case?; and (iv) questions of a general nature regarding the drafting of the expert report.

52434 2387

Sep 22 00 04:37p

Shannon Law Firm, PLLC

6018945033

P.3

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VACATION

CIRCUIT COURT MINUTES

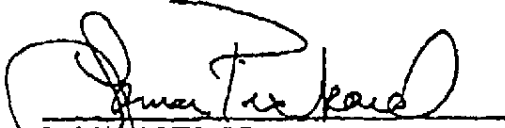
SEP 22 2000

305


IT IS FURTHER ORDERED THAT, to the extent testimony has, at depositions in this case, been elicited from any expert which should not be inquired into pursuant to the foregoing order, then no party shall use such testimony in any manner, in this case or otherwise; and each party shall treat such responses as Confidential pursuant to the prior orders of this Court in this

Case

SO ORDERED, this 22 day of September, 2000.


LAMAR PICKARD
CIRCUIT JUDGE

AGREED:


TIM GRAY, on behalf of Owens Corning


BRUCE TEPIKIAN, on behalf of
Non-Liggett Tobacco Defendants


THOMAS COOK, on behalf of
Liggett Tobacco Defendants

Sep 22 00 04:37p

Shannon Law Firm. PLLC

6018945033

p. 3

BEST
COPY

VACATION


CIRCUIT COURT MINUTES

SEP 22 2000

305

IT IS FURTHER ORDERED THAT, to the extent testimony has, at depositions in this case, been elicited from any expert which should not be inquired into pursuant to the foregoing order, then no party shall use such testimony in any manner, in this case or otherwise; and each party shall treat such responses as Confidential pursuant to the prior orders of this Court in this

Case

SO ORDERED, this 5th day of September, 2000.
LAMAR PICKARD
CIRCUIT JUDGE

AGREED:


TIM GRAY, on behalf of Owens Corning
BRUCE TEPIKIAN, on behalf of
Non-Liggett Tobacco Defendants
THOMAS COOK, on behalf of
Liggett Tobacco Defendants

8

HUMPHREY

in

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FEB. 23, 2001 10:18AM

NO. 3286 P. 2

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WASHINGTON, D.C.
ZURICH

Bruce R. Tepikian
816/460-4704

February 22, 2001

VIA TELEFAX & U.S. MAIL

Richard L. Forman, Esq.
Forman Perry Watkins Krutz & Tardy, PLLC
1200 One Jackson Place
188 East Capitol Street
Jackson, MS 39225-2608

RJ: Owens Corning; Deposition of Dr. Jurinski

Dear Rick:

This letter is in response to your February 21, 2001 letter regarding the deposition of Dr. Jurinski. Consistent with his expert report, his reliance materials and my February 20, 2001 letter, Dr. Jurinski will offer expert opinions within his area of expertise regarding the specific Owens Corning claims files he has reviewed (see Dr. Jurinski's reliance materials). Whether you choose to question him on issues related to the claims files is up to you.

Sincerely,

Bruce R. Tepikian
Bruce R. Tepikian

BRT/alg

cc: Thomas Defense Counsel



389385.1

52434 2391